

U.S. SMALL BUSINESS ADMINISTRATION
OFFICE OF THE NATIONAL OMBUDSMAN

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2011 NATIONAL REGULATORY FAIRNESS HEARING

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TUESDAY
MAY 24, 2011

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The hearing convened in the Smith Theatre at the Horowitz Visual & Performing Arts Center, Howard Community College, 10901 Little Patuxent Parkway, Columbia, Maryland, at 9:00 a.m., Esther H. Vassar, SBA Ombudsman, presiding.

SBA PARTICIPANTS:

ESTHER H. VASSAR, National Ombudsman and
Assistant Administrator for Regulatory
Enforcement Fairness

JOHN SHORAKA, Regional Administrator for
Region III

STEPHEN UMBERGER, Baltimore District Director

REGION III REGULATOR FAIRNESS BOARD MEMBERS:

BROOKS HULITT, Philadelphia, Pennsylvania

LOUIS HUTT, Columbia, Maryland

MARILYN LANDIS, Pittsburgh, Pennsylvania

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Region III Regulatory Fairness

Board Members:

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Brooks Hulitt, Philadelphia, P.A.

Louis Hutt, Columbia, Md.

Marilyn Landis, Pittsburgh, P.A.

Dona Storey, Virginia Beach, Va.

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1 P-R-O-C-E-E-D-I-N-G-S

2 (9:19 a.m.)

3 MR. UMBERGER: Good morning,
4 everyone. My name is Steve Umberger, District
5 Director of the Baltimore District Office of
6 the SBA. I'm very honored to welcome you all
7 here this morning.

8 We are pleased to bring to
9 Maryland this tremendous opportunity for the
10 voices of small business to be heard.

11 Before I begin, or before we
12 begin, I'd like put out a huge thank you to
13 our host, Dr. Kathleen Hetherington, President
14 of Howard Community College and the College's
15 Board of Trustees.

16 (Applause.)

17 MR. UMBERGER: She really latched
18 on this right from the get-go, and her
19 outstanding support of this event has been --
20 you know, we're very grateful for the
21 college's -- all the college's assistance.

22 We have quite a bit to cover

1 today, so this -- my introduction will be
2 brief. Without further delay, it's my
3 distinct pleasure to introduce my Regional
4 Administration, John Shoraka.

5 John manages a field staff of more
6 than a hundred loan, business and community
7 outreach specialists, serving a population of
8 over 29.5 million folks in the mid-Atlantic
9 Region. During fiscal year 2010, District
10 Offices in Region III approved 3830 loans to
11 small business for more than a billion
12 dollars.

13 With a background in business
14 development, international trade, government
15 contracting and management, John works on
16 behalf of the small businesses and
17 entrepreneurs across the region as they turn
18 to SBA for the tools they need to start, grow
19 and be successful in their business and create
20 jobs.

21 So, please welcome John Shoraka.

22 (Applause.)

1 MR. SHORAKA: Thank you, Steve.

2 And, good morning.

3 It's a pleasure for me to
4 participate today in these proceedings. I
5 look forward to hearing from small business
6 owners, trade association representatives and
7 community and business leaders regarding
8 regulatory fairness towards small businesses.

9 SBA, National Ombudsman, Esther
10 Vassar, has worked tirelessly to help create
11 a more cooperative regulatory environment
12 among Federal agencies and small businesses.

13 Esther Vassar was appointed
14 National Ombudsman and Assistant Administrator
15 for Regulatory Enforcement Fairness for the
16 SBA in August 2009.

17 Ombudsman Vassar brings firsthand
18 experience that greatly enhances the
19 communication and relationships between small
20 businesses and Federal regulatory agencies.

21 Ombudsman Vassar is a three-time
22 gubernatorial appointee, a graduate of Howard

1 University, University of Virginia and the
2 Harvard University Executive Program for State
3 Officials.

4 Prior to her appointment as
5 National Ombudsman, Ms. Vassar served as
6 Commissioner of the Virginia Department of
7 Alcoholic Beverage Control, a regulatory
8 agency with more than 2500 employees.

9 Prior to joining ABC, Ombudsman
10 Vassar was President and CEO of E.H. Vassar
11 Enterprises in Newport News, Virginia, an
12 organization specializing in political
13 consulting, fund-raising, event planning and
14 corporate training.

15 In 1990, Ms. Vassar was the
16 gubernatorial appointee of Governor Wilder in
17 charge of directing the Virginia Department of
18 Minority Business Enterprise.

19 In this role, she administered the
20 State's minority business procurement efforts
21 and also created and executed the Governor's
22 African Trade Initiative and monitored the

1 purchasing procedures of all State agencies.

2 Ombudsman Vassar is well-known and
3 recognized for her contributions and services
4 to her communities and the people in those
5 communities. She has served as an
6 administrator and faculty member for more than
7 twenty years at several universities in
8 Virginia, North Carolina and Washington, D.C.

9 It is a pleasure for me today to
10 have the opportunity to introduce her to you
11 today.

12 Ladies and gentlemen, please help
13 me welcome SBA National Ombudsman, Esther
14 Vassar.

15 (Applause.)

16 MS. VASSAR: Thank you, John, and
17 than you, Steve, for working with us over the
18 last months to pull this, the National Hearing
19 together.

20 It is, indeed, my pleasure to
21 serve as one of the voices for small
22 businesses in this country. In that capacity,

1 our office works to work cooperatively with
2 Federal agencies, all Federal agencies in the
3 United States Government to deal with
4 regulatory enforcement issues that small
5 businesses have with those Federal agencies.

6 We act as a liaison between those
7 agencies and the small business owners. So,
8 today we are here to hear some of the concerns
9 that small businesses across the country have
10 with Federal agencies.

11 And I am happy to say that I have
12 a lot of help in doing that; first of all,
13 with my staff, and we -- who work to put these
14 things together, not only here but across the
15 country.

16 And -- where are the staff
17 members? Where are the Office of Ombudsman
18 staff members?

19 If those of you on the phone don't
20 know that we have people in the audience here
21 also, mostly Federal agency representatives,
22 who can hear you directly talk about the

1 regulatory concerns that you have --

2 (Telephonic interference.)

3 MS. VASSAR: But where is the
4 staff of the Office of the National Ombudsman?
5 Would you all please -- I want to acknowledge
6 them publicly.

7 (Applause.)

8 Yolanda, Maurice, Ellie, Cindy,
9 Ann. Is everybody -- Jose. You've met Jose.
10 Okay. There are seven of us to serve the
11 country. So, what you see is what you've got.
12 And you've got a heck of a team.

13 Those of you on the phone, would
14 you please mute your phone so we won't have
15 any feedback until you are asked to speak.

16 The way it's organized today,
17 we'll hear from the small businesses and, for
18 the small businesses on the line, you should
19 know that you have people in your regions who
20 also serve you.

21 Those of you whom I have met on
22 the line, you know that we have ten regional

1 boards across the country, and we are sitting
2 right now in Region III.

3 John is the Regional
4 Administrator. Steve is the District Director
5 for this particular location, and we have
6 board members that represent you. In this
7 Region, we actually have five board members.
8 Three of them have joined me today.

9 Our Chairman for Region III Board
10 is Brooks Hulitt. Brooks, he's from
11 Philadelphia, Pennsylvania. Louis Hutt.
12 Louis is from Columbia, Maryland. And Louis
13 helped to set up this venue, along with
14 Steven, to make this possible.

15 And he's from Columbia, Maryland,
16 along with Marilyn Landis, who is from
17 Pittsburgh, Pennsylvania, Dona Storey, who is
18 from Virginia Beach, Virginia. So, you see,
19 there's a diversity of representation.

20 We try to do that across the
21 country. So, those of you in other regions
22 across the country, please check with your

1 district directors to make sure that you know
2 who your representatives there on the Regional
3 Fairness Boards are. They can be also your
4 voices, you know, for your connection to
5 Washington, D.C.

6 I want to also acknowledge that we
7 have an unprecedented number of Federal
8 agencies represented. And I want you, on the
9 phone, to know who those agencies are so that
10 if you have a particular issue you will know
11 that you are being heard.

12 Somebody's got -- hasn't muted
13 their phone. Please mute your phone.

14 (Off-record comment.)

15 MS. VASSAR: Please mute -- those
16 of you on the phone, would you please put your
17 phone on mute.

18 Technology is wonderful, isn't it?

19 Would you please mute your phone.

20 (Off-record comment.)

21 MS. VASSAR: We're trying.

22 Would you please mute the phone.

1 (Telephonic interference.)

2 MS. VASSAR: All right.

3 Everybody, please make sure that you can hear.
4 We have been talking for 15 minutes and didn't
5 realize you couldn't hear. But we have not
6 taken any testimony.

7 This is Esther Vassar, and those
8 of you on the line, would you please put your
9 phones on mute so that you can -- so that we
10 won't have any feedback.

11 Present with us today in the
12 audience, we have Federal agency
13 representatives, along with three Region III
14 Reg Fair Board Members.

15 (Telephonic interference.) MS.
16 VASSAR: The Federal agency is represented
17 today, including -- and I want you all on the
18 phone to hear this so you will listen for the
19 Federal agency with which you have a
20 regulatory issue.

21 We have the Federal Communications
22 Commission; Federal Deposit Insurance

1 Corporation; Federal Trade Commission; Pension
2 Benefit Guarantee Corporation; Consumer
3 Product Safety Commission; Department of
4 Agriculture, Food Safety Inspection Service;
5 the Department of Defense, and the Air Force
6 and the Army; Department of Education;
7 Department of Health and Human Services, and
8 that includes Food and Drug Administration and
9 Centers for Medicare and Medicaid Services;
10 the Department of Homeland Security, that
11 includes Customs and Border Patrol, Citizens
12 of Immigration Services and the Coast Guard;
13 the Department of Justice, which includes the
14 Bureau of Alcohol, Tobacco and Firearms, Civil
15 Rights Division and the Office of Legal
16 Policy; the Department of Labor, this includes
17 the Office of Compliance Assistance Policy,
18 the Office of Enforcement Policy, and the
19 Office of Small Business Programs; the
20 Department of Transportation, which includes
21 the Office of Regulation and Enforcement;
22 Environmental Protection Agency; Equal

1 Employment Opportunity Commission; the Federal
2 Reserve Board; the Internal Revenue Service,
3 including Small Business, Self-Employed
4 Division, Stakeholder Liaison, Taxpayer
5 Advocate Service; the National Credit Union
6 Administration; the National Labor Relations
7 Board, which includes the Office of the
8 General Counsel; and the Small Business
9 Administration.

10 Representing Small Business
11 Administration; the Office of the
12 Administrator; the Office of Advocacy; the
13 Office of Capital Access; the Office of Field
14 Operations; the Office of Government
15 Contracting and Business Development; the
16 Office of the National Ombudsman; the Office
17 of Women's Business Ownership, and the Office
18 of Trade and Commerce.

19 So, you hear all of those agencies
20 are here to hear about your concerns as they
21 relate to Federal Enforcement and Fairness.

22 We will now begin our testimony

1 and, as I call your names, you can unmute your
2 buttons and give your testimony.

3 We ask that you -- we asked you to
4 submit your testimony prior to testifying, so
5 we ask that you express almost exactly the
6 testimony that you submitted.

7 We have 21 people testifying this
8 morning. Our first testimony will come from
9 Mr. Eddie Jolly, representing the Independent
10 Turtle Farmers of Louisiana.

11 His issue will be addressed or
12 heard by the FDA.

13 Mr. Jolly, are you on the line?

14 MR. JOLLY: Yes, ma'am.

15 MS. VASSAR: Good morning.

16 MR. JOLLY: Good morning to you.

17 MS. VASSAR: Okay. All right.

18 Would you give your testimony, please.

19 MR. JOLLY: Yes. I'm Eddie Jolly,
20 President of the Independent Turtle Farmers of
21 Louisiana, a nonprofit organization for the
22 improvement of the turtle industry.

1 The FDA has completely blocked our
2 baby turtle from the USA market for 36 years
3 while allowing all other pets that carry
4 salmonella to remain on the US market with no
5 restrictions.

6 One example is, the FDA knows the
7 prevalence of salmonella in green iguanas and
8 the potential health risks associated with
9 these animals, and yet they have made no
10 decisions against their import.

11 The primary difference between
12 these two groups of animals is that years of
13 research have been done to correct a perceived
14 problem in the turtles, and yet we remain the
15 scapegoat.

16 There are about 1500 species of
17 pets sold today in the USA that carry
18 salmonella but are under no restrictions. If
19 the FDA truly believed in the importance of
20 promoting public health through regulation,
21 then they would show the same aggression
22 pursuing policies to restrict salmonella in

1 our foods.

2 Currently up to 23.5 percent of
3 chickens being processed a slaughterhouse may
4 be salmonella positive before being condemned.
5 Although this number is lower for meat, 12.5
6 percent is still higher than what should be
7 considered acceptable.

8 The CDC estimates that there are
9 about one to two million total cases of
10 salmonella per year in humans, with the
11 overwhelming majority, especially confirmed
12 cases, being associated with food.

13 Again, if the FDA was truly
14 interested in public health, their focus would
15 be on the larger, more important groups.
16 Unfortunately, this is not the case. "Follow
17 the dollar," says most politicians off the
18 record, and you will find the truth.

19 No other pet-related industry has
20 invested even a fraction of the time or money
21 that the turtle industry has invested to
22 ensure product safety.

1 If the FDA truly is interested in
2 preventing disease in children it would focus
3 on larger issues that have a far greater
4 impact and have been objectively measured, not
5 just estimates, such as food poisoning
6 associated with contaminated milk, livestock,
7 poultry and other pets as known carriers of
8 salmonella.

9 We believe that the FDA does not
10 address these issues because of the large
11 lobbying and special-interest groups
12 associated with them.

13 Apparently they have no problem
14 condemning a small group of farmers from some
15 of the most economic-deprived areas of the
16 country, Louisiana and Mississippi.

17 The methods used to maintain
18 turtles today is vastly different from the
19 1970's. We now recognize these turtles have
20 specific husbandry needs.

21 To assume that things would be the
22 same is extremely short-sighted, and we have

1 grown impatient with the FDA and the CDC using
2 husbandry as an issue.

3 Not only have they not taken the
4 time to evaluate the advances in husbandry,
5 they do not show the same determination in
6 creating better environments for other
7 species.

8 The FDA has cowarded down to
9 special-interest groups year-after-year, all
10 the while keeping their foot on our throat,
11 thus crushing us out.

12 The CDC uses a 1980 statistic
13 based off of 1976 data, the year after the ban
14 became effective, to prove that the ban is
15 working. That's right. 1975 is when they
16 banned.

17 Did you know that some rural areas
18 of the United States, especially the South,
19 was just now getting electricity and running
20 water in their homes?

21 In 1975, some people had never
22 heard the word "bactericide, antibiotic or

1 disinfectant." In fact, 1975 was the infancy
2 years for human hygiene. Thirty-six years ago
3 a computer was as big as a room in your house.

4 Since 1975, there's been more
5 scientific advances than all the years humans
6 have existed prior to 1975.

7 We, the turtle industry, produce
8 turtles that are 98.9 percent salmonella-free,
9 and the other 1.1 percent are not allowed on
10 the pet market.

11 No other salmonella-related
12 product can come close to our laboratory-
13 proven safety percentages.

14 What will it take to bring the CDC
15 and the FDA to present day and recognize out
16 science?

17 Our only hope is that someone with
18 more power than the FDA, which recognizes the
19 huge discrimination we, the turtle industry
20 have been living with for 36 long years.

21 We pray that you, the Ombudsman,
22 have that ability and willingness to help our

1 dying industry and prevent us from getting
2 crushed out.

3 Thank you for allowing us a voice.
4 Again, I'm Eddie Jolly, president, Independent
5 Turtle Farmers of Louisiana. Thank you.

6 MS. VASSAR: Thank you, Mr. Jolly.
7 And FDA is represented today, so they have
8 heard directly from you.

9 MR. JOLLY: I appreciate it.

10 MS. VASSAR: Thank you.

11 Our next testimony will come from
12 Mr. Steinmetz, Jay Steinmetz. Is he here?

13 MR. STEINMETZ: Yes. Thank you.

14 MS. VASSAR: Oh, you're on the
15 phone?

16 MR. STEINMETZ: Yes.

17 MS. VASSAR: Okay. Mr. Steinmetz
18 from Barcoding, Incorporated, and his
19 complaint or comment is an EEOC one.

20 Are you prepared to testify, Mr.
21 Steinmetz?

22 MR. STEINMETZ: Yes.

1 MS. VASSAR: All right. You can
2 begin.

3 MR. STEINMETZ: Let me start by
4 writing -- I mean, despite injecting over a
5 trillion dollars into our economy, the
6 unemployment rate is still nine percent and
7 our economy is anemic.

8 Everyone talks about jobs, but few
9 have direct experience in actually creating
10 them. I do.

11 My name is Jay Steinmetz, and I am
12 the CEO of Barcoding, Incorporated. A 70-
13 person company based in Baltimore, Maryland.
14 We have been in business for 14 years.

15 Additionally, I chair the Maryland
16 Technology Development Corporation Board of
17 Directors, and an active board member of the
18 Maryland Small Business Commission. Needless
19 to say, I have direct exposure to the
20 consequences of our legal environment.

21 Within the last few years we,
22 Barcoding, have been exposed to repeated

1 litigation caused by employees attempting to
2 use the EEOC as a tool to extort money --

3 MS. VASSAR: Mr. Steinmetz, you've
4 got some feedback. I don't know, maybe it's
5 too close.

6 MR. STEINMETZ: Okay. Hold on one
7 second and I will just switch to a better
8 media, if you will bear with me. Okay.

9 Is that better?

10 MS. VASSAR: Talk some more so we
11 can hear it. Let me see.

12 MR. STEINMETZ: All right. I'm
13 going to talk some more. So. All right. Can
14 you hear me better now?

15 MS. VASSAR: Yes, that's better.

16 MR. STEINMETZ: All right. So --
17 thank you.

18 All right. So, within the last
19 few years we've, at Barcoding, Inc., have been
20 exposed to repeated litigation caused by
21 employees attempting to use the EEOC as a tool
22 to extort money from the business.

1 My community of peers confirms
2 that in most cases, the employers are forced
3 to settle a frivolous case because it is less
4 expensive to do so. The end result is
5 employees and the legal community mutually
6 benefit at the expense of this general
7 business community.

8 This trend seems to weigh heavily
9 on private and public organizations as an
10 increasing ancillary expense and distraction,
11 especially problematic when the climate for
12 growth needs the least distraction possible.

13 There may be a real need to voice
14 -- for people to voice their concerns to an
15 organization such as the EEOC. Many assume
16 that there should a careful balance between
17 people with little money and a corporation
18 with big pockets; however, at this moment in
19 time with deficits at record highs, massive
20 trade deficits, and the government threatening
21 to shut down, it is time now to reflect upon
22 the fundamentals of what we consider

1 equilibrium.

2 We owe it to the next generation
3 to draw the courage to act on these issues,
4 for if we do not do it now, we may not get the
5 chance or choice in the future.

6 I am not saying that the issues I
7 face here are solely responsible for the
8 ailments currently challenging the United
9 States; however, this is probably one of
10 several factors each that needs to be
11 addressed individually to get America back on
12 the path to prosperity and balance.

13 No less than five years ago we
14 hired a protected class individual in a
15 specific new job, unoccupied by anyone
16 previously within our organization. She
17 sensed we were not happy with the quality of
18 her work. This caused friction within the
19 organization.

20 Within a few months of her initial
21 hire date, this person filed an EEOC claim,
22 claiming wage discrimination and harassment,

1 despite no other person in this position prior
2 to her during employment.

3 This was a new position within our
4 organization and was needed because we were
5 growing as an organization. Needless to say,
6 we won the case, but not without some serious
7 cost and distraction.

8 Recently, another protected class
9 person employed for nine months telecommuting
10 -- telecommuting, filed an EEOC claim against
11 us. As happens in many cases, this person was
12 not meeting her quota commitment for selling
13 of products and services within our company.

14 At around that time that
15 compensation was being modified to reduce or
16 eliminate the monthly salary draw that this
17 person was receiving, we received a letter
18 exclaiming sexual harassment from this
19 telecommuting worker.

20 We immediately engaged outsources
21 HR services and legal services to deal with
22 the issue. The individuals implicated were

1 immediately reprimanded, regardless of whether
2 they were guilty or not.

3 Also of note, I was an ancillary
4 named in the letter of accusation. This event
5 took a huge toll on my company, the employees
6 and their families. In this case, this was
7 the third -- I repeat, the third EEOC filing
8 made by this individual. Each one was against
9 a different employer.

10 There were no one-on-one isolated
11 semi-sexual events, just allegations of
12 inappropriate comments and accusations of
13 illicit behavior that had no affiliation with
14 the individual filing the charges -- the
15 individual filing the charges.

16 Despite this, the individual that
17 filed the charge was asking for damages in
18 excess of \$350,000. Due to her history and
19 unsubstantiated nature of the claims, we
20 suspect she was hoping for a quick payoff
21 settlement.

22 The end result has been

1 significant hard and soft costs for our
2 business. Once the charges were filed to the
3 EEOC, we couldn't let her go without being
4 charged with retribution or retaliation.

5 This individual remained on the
6 payroll for months until she quit, taking
7 another job.

8 The loss in productivity of our
9 key staff at a critical moment in our business
10 was tremendous, and the end results have yet
11 to be determined.

12 What can be determined was that we
13 have spent well over \$60,000 in hard costs and
14 a quarter of a million in lost opportunity
15 costs. The decrease in productivity and
16 morale that it caused is still being felt.

17 Most business owners, quickly
18 settle which is what the lawyers that take the
19 cases hope. I believe most business owners,
20 start-up entrepreneurs, and many legal
21 professionals would agree with this prognosis.
22 Quick settlement then breeds more attempts.

1 I have heard of many more stories
2 like this from CEO's and entrepreneurs around
3 the country. If we don't make serious legal
4 changes , we are going to continue to fail
5 economically.

6 What we need now, more than ever
7 is balance. Balance in trade and balance in
8 spending. To help with this balance, I would
9 suggest you significantly deter repeat
10 litigants.

11 In addition, there should be a tax
12 that scales with the size of the complaint.
13 If a desperate lawyer takes a case on
14 contingency, it damages American commerce.
15 The business community and Government are ripe
16 with these kinds of complaints. Now is the
17 time to act to eliminate these excessive
18 burdens on business and rebalance our economy.

19 Thank you very much.

20 MS. VASSAR: Thank you very much.

21 Our next Complainant is Meana
22 Ward.

1 Ms. Ward, are you in the audience?
2 And yours is with SBA Capital Access. Ms.
3 Ward.

4 MS. WARD: Can you hear me? Can
5 you hear me?

6 MS. VASSAR: Speak up. Maybe if
7 you were to speak up --

8 MS. WARD: Hello.

9 MS. VASSAR: Ms. Ward, you need to
10 speak up.

11 MS. WARD: Okay. I obtained two
12 micro loans from Innovative Bank that were
13 guaranteed by the Small Business
14 Administration. Both loans were placed in
15 default status from the original lender,
16 Innovative Bank, sometime in 2009.

17 The loans are now with the
18 Department of Treasury for collection and any
19 Federal payments made to me are being offset
20 as a means of collection for the debt.

21 Upon initiating contact with each
22 of the organizations named, I was informed

1 that the address of record was a previous
2 address. My correct address was placed file
3 with the original lender, as evidenced by the
4 attached letter mailed directly to me from
5 Innovative Bank, dated December 2008.

6 Neither loan -- neither account
7 should be in default status, as the law
8 requires written notice of any default prior
9 to the initiation of any action.

10 I did not receive due process
11 because I did not receive notice from
12 Innovative Bank, the SBA, the Internal Revenue
13 Service or any other debt collection entity
14 associated with this debt.

15 I only learned that the accounts
16 were in a delinquent status after obtaining a
17 copy of my credit report in January 2010.

18 Prior to that I had no reason to
19 believe the loans had an outstanding balance,
20 because I was making monthly payments. I'm
21 unclear as to why Innovative Bank have failed
22 to update all of their records or why they

1 have failed to provide the correct address or
2 agencies affected.

3 I can only assume poor
4 recordkeeping or some other bank error. I
5 have written several letters and spoken with
6 several Government workers from the SBA and
7 the Department of Treasury. The responses
8 always seem to indicate that someone else has
9 jurisdiction over this matter or that the
10 requirement of the law is somehow not
11 applicable to this matter.

12 I find myself most incensed by the
13 blatant manner in which the Government ignores
14 the legal requirements that it sets forth and
15 by the indifferent and unresponsive attitude
16 of those employed to assist the public.

17 SBA has guaranteed the loans and
18 has jurisdiction of this matter. I am here
19 today to request that SBA uphold its duty by
20 doing the following: Immediately stop the
21 offset of Federal payments made to me, remove
22 both loans from default status with the

1 Department of Treasury, reverse all fees that
2 have been added to the original loan balance
3 by Innovate Bank, SBA or the Department of
4 Treasury, instruct Innovative Bank and any
5 other organization to remove any negative
6 references from my credit report.

7 When the loan is returned to SBA
8 for servicing, I will then make a lump sum
9 payment of the money owed for the correct
10 balance due.

11 Please find the attached documents
12 as listed: Letter dated to me -- sent --
13 mailed to my correct address from Innovative
14 Bank dated December 2008, proof of the monthly
15 payments made to Innovative Bank, Fair Debt
16 Collections Standards Act, 15 USC 1692,
17 Section 809, Validation of debts, which
18 requires written notification by a debt
19 collector and, a letter from SBA indicating
20 that all notices were sent to the incorrect
21 address as provided by the lender, which is
22 dated March 15th, 2011.

1 Thank you.

2 MS. VASSAR: Thank you, Ms. Ward.
3 SBA is represented and, in fact, we have about
4 seven people represented from SBA.

5 TELEPHONE PARTICIPANT: Ma'am, we
6 can't hear -- we cannot hear the testimony
7 from the floor.

8 MS. VASSAR: We will ask the
9 person to come and stand closer to the
10 telephone. Apparently it only comes through
11 the telephone.

12 TELEPHONE PARTICIPANT: Okay.
13 That would be great.

14 MS. VASSAR: Okay. Our next
15 testimony comes from Mr. Mitchell Archer, and
16 his issue -- is Mr. Archer here or on the
17 phone?

18 MR. ARCHER: Yes. Yes.

19 MS. VASSAR: You're on the phone?
20 Okay. Mr. Archer's comment is directed at the
21 IRS.

22 Mr. Archer.

1 MR. ARCHER: Yes.

2 MS. VASSAR: You may begin.

3 MR. ARCHER: My name is Mitchell
4 Archer. I own and operate Healthy Filling
5 Snacks, LLC, a food vending business in
6 Durham, North Carolina.

7 Healthy Filling Snacks is the
8 premier provider of healthy alternative snack
9 foods. We provide prepackaged foods and
10 catering services to school districts,
11 colleges, universities, day camps, day care
12 centers, summer camps, convention centers and
13 sports arenas.

14 Health Filling Snacks supports the
15 Federal and State Government Healthy People
16 2020 Plan. Healthy Filling Snacks is a
17 minority-owned small business.

18 Today, I would like to testify
19 about my difficulties obtaining funding for my
20 business. I would also like to propose what
21 I believe is a rather simple and
22 noncontroversial solution to help me and other

1 small businesses find operations and attract
2 loans and other sources of capital.

3 I have approached several
4 financial institutions about loans and other
5 types of funding arrangements but I was turned
6 down because I was a start-up or because I was
7 unable to prove that I had available funds to
8 invest in my business.

9 However, I do have funds in my
10 401(k) retirement account to invest in my
11 business, but they are unavailable to me
12 without a big penalty.

13 I am a retired former government
14 worker with a 401(k) and, like many other
15 small business owners I have saved my money in
16 a retirement account.

17 I am requesting and would like to
18 use some of my money to invest in my own
19 business Healthy Filling Snacks.
20 Unfortunately, the Federal IRS tax laws
21 prohibit me from withdrawing the funds without
22 incurring a hefty penalty. My questions are

1 simply this: Why should the SBA or any bank
2 or financial institution make a loan to any
3 start-up business if the owner is not able to
4 invest in itself?

5 Would it be a win-win for the
6 business owner/entrepreneur, as well as the
7 economy and the lenders, if people like me
8 could use some of our own 401(k) account money
9 without a penalty to support a business?

10 I am requesting that the IRS
11 remove any 401(k) fines and penalties for
12 people like me who believe in themselves and
13 who wishes to use his own funds from a
14 retirement account to fund a legitimate
15 business.

16 I am also requesting that the IRS
17 allow people like me who wishes to take his
18 life into his own hands and not totally rely
19 upon banks to obtain a loan from a 401(k) or
20 retirement account without a deferment of loan
21 payments for a certain period of time.

22 Thank you. Mitchell Archer,

1 President and CEO of Healthy Filling Snacks,
2 LLC.

3 MS. VASSAR: Thank you, Mr.
4 Archer.

5 MR. ARCHER: Thank you.

6 MS. VASSAR: Our next testimony
7 will come from Mr. Nick Cline. Is Mr. Cline
8 in the audience?

9 Mr. Cline, come up to the front
10 and kind of speak into the phone --

11 MR. ARCHER: Mr. Mitchell Archer,
12 Healthy Filling Snacks.

13 MS. VASSAR: -- so that the people
14 on the line can hear you.

15 MR. CLINE: Okay. Good morning,
16 SBA Director, Ms. Vassar, Administrators,
17 Board Members, Agency Representatives and
18 fellow participants.

19 MS. VASSAR: All right. Let me
20 ask, can you all hear him? Can you hear him?

21 TELEPHONE PARTICIPANT: Yes, we
22 can.

1 MS. VASSAR: Okay. Just wanted to
2 make sure.

3 MR. CLINE: Three letters have
4 been sent certified mail to the Department of
5 Defense that have never been addressed by the
6 Department of Defense IG. No other agencies
7 have also been notified.

8 A subcontractor has violated the
9 FAR, DCAA regulations, IRS regulations, and
10 possibly other various Federal rules and
11 regulations.

12 A subcontractor has received
13 hundreds of thousands, possibly millions for
14 no work performed.

15 A subcontractor has falsified
16 business tax returns, thus filing falsified
17 personal tax returns and undervaluing the
18 company.

19 The president of the company was
20 unaware of the falsifications of corporate
21 records since the CEO refused to permit the
22 president to know or review any financial data

1 or records for over a three-year period.

2 All these files have been scanned.
3 Those files were backed up on the company
4 server, as well as a portable hard drive.
5 That portable hard drive has been in the
6 custody of a lawyer in since July of 2010.

7 The subcontractor is currently
8 attempting to destroy all the data known both
9 in hard copy and digital. Will the Department
10 of Defense IG investigate this travesty of
11 taxpayer trust violations by a subcontractor's
12 CEO?

13 Should the DoD IG or the IRS, the
14 DCAA, the SBA or others intercede and prevent
15 the destruction of the hard drive, since
16 supporting documents to these illegalities are
17 on the hard drive?

18 In the meantime, the DoD and other
19 Federal Agencies have been and are still
20 considering awarding future contracts to a
21 company that employs this CEO.

22 Respectfully submitted, Dr. Nick

1 Cline. And on a side note, I'd like to thank
2 Jose for all the work he's done. I don't
3 think he ever sleeps.

4 MS. VASSAR: He doesn't. Thank
5 you, Mr. Cline.

6 And that comment was directed at
7 the Department of Defense.

8 Our next testimony will come from
9 Scott Lara. Is it Lara or Lara?

10 MR. LARA: Lara.

11 MS. VASSAR: Lara. And Mr. Lara
12 is filing his complaint directed at CMS.

13 Thank you for coming, Mr. Lara.

14 MR. LARA: Thank you.

15 My name is Scott Lara and I am the
16 director of Governmental Affairs with Welcome
17 Homecare in Jacksonville, Florida.

18 I am honored to represent the 670
19 members of the Homecare Association of
20 Florida. The mission of HCAF is to advance
21 the interest and meet the needs of our
22 members, enabling them to provide the highest

1 quality and most cost-effective services
2 throughout Florida.

3 Before I begin I wanted to thank
4 Assistant Administrator Esther H. Vassar, the
5 National Ombudsman and Assistant Administrator
6 for Regulatory Enforcement Fairness for her
7 leadership.

8 It takes a bold and dedicated
9 professional to vocally address the concerns
10 of small businessmen and businesswomen in our
11 country in bringing those important issues to
12 the proper governmental agencies. Thank you
13 for your leadership.

14 I would also like to thank the SBA
15 staff, Regional Fairness Board Members and the
16 Howard Community College for hosting this
17 hearing today.

18 I have traveled from Florida today
19 to personally share with you one of the most
20 egregious, unfunded mandate requirements of
21 the recently passed Affordable Care Act that
22 affects home health agencies, physicians, and

1 most importantly, the patients we both serve.

2 Effective April 1st, 2011, the
3 Centers for Medicare and Medicaid Services
4 expected home health agencies to have fully
5 established internal processes to comply with
6 the face-to-face encounter requirements
7 mandated by the Affordable Care Act for
8 purpose of certification of a patient's
9 eligibility for Medicare Home Health Services.

10 Section 6407 of the ACA
11 established a face-to-face encounter
12 requirement for certification of eligibility
13 for Medicare Home Health Services by requiring
14 the certifying physician to document that he
15 or she or a nonphysician practitioner working
16 with the physician has seen the patient.

17 The encounter must occur within
18 the 90 days prior to the start of care, or
19 within the 30 days after the start of care.

20 Documentation of such an encounter
21 must be present on certifications for patients
22 with starts of care on or after January 1st,

1 2011.

2 This additional paperwork flies in
3 direct opposition to the Paperwork Reduction
4 Act, Subchapter 3501.

5 Let me take a moment to explain
6 exactly what CMS is asking physicians to do.
7 Everyone knows that physicians are overworked
8 and underpaid for the services they provide,
9 especially Medicare physicians.

10 In the past, a Medicare physician
11 was required to sign one piece of paper, the
12 485 with his signature. The 485 already has
13 the verbiage preprinted on it regarding the
14 requirements of home care.

15 Please refer to Exhibit 1 of my
16 testimony, and if the Board Members don't have
17 it, I have it here, if you'd like.

18 MS. VASSAR: We have it.

19 MR. LARA: You have it. Thank
20 you.

21 Allow me to direct your attention
22 to Boxes 26, 27 and 28 at the bottom of the

1 page. Box 26 clearly states that the
2 physician is certifying homebound status,
3 needs care, is under the care of the
4 physician, in addition to other items.

5 Box 27 is the location for the
6 physician's signature and date.

7 Box 28 states the penalty for
8 falsely authorizing home health care.

9 Now refer to Exhibit 2 of my
10 testimony. This is the form we have to use
11 now, in addition to the 485, to comply with
12 the Affordable Care Act.

13 Not only is it duplicative, but it
14 requires a physician to write out in longhand
15 -- templates are not permitted -- the specific
16 answers to the duplicative questions.

17 With the advent of the face-to-
18 face encounter requirement, physicians are
19 required to write out in longhand the date of
20 the encounter, the specific medical condition
21 the patient has, check the services needed,
22 write in longhand the clinical findings of the

1 face-to-face encounter, write out in longhand
2 the reason why the person is homebound, sign
3 the form, handwrite the date and print his or
4 her name.

5 Medicare will not reimburse home
6 health agencies for care provided in good
7 faith when the face-to-face encounter
8 paperwork is not fully completed by the
9 doctor.

10 Home health agencies have already
11 paid our nurses, paid for supplies, paid for
12 gas, all in good faith, and the care has been
13 provided up front, but then Medicare will
14 refuse to reimburse the home health agency for
15 services provided.

16 In addition, when trade
17 associations, members of Congress, and other
18 entities affected by this unfunded mandate,
19 have requested additional time for Director
20 Jonathan Blum, Director of CMS, to modify the
21 face-to-face requirement, recently he has
22 basically thrown up his hands and said, "The

1 law is the law, and there is nothing he can do
2 about it."

3 That's why I'm here today. I'm
4 asking the SBA to direct Secretary Kathleen
5 Sebelius directly and ask her to direct -- and
6 ask her to direct Director Blum to halt the
7 face-to-face documentation requirement
8 indefinitely until congressional oversight
9 hearings can be held on this issue.

10 I would ask that all stakeholders,
11 including CMS, the National Association of
12 Homecare, the Visiting Nurse Association of
13 America, the American Medical Association, the
14 SBA, myself and others, be afforded the
15 opportunity to testify on the record on this
16 important issue.

17 If Secretary Sebelius refuses to
18 direct Director Blum to halt the face-to-face
19 requirement, I'm asking SBA to contact Speaker
20 Boehner and Majority Leader Reid to intervene
21 on behalf of the home health industry,
22 physicians and our patients by calling for

1 immediate hearings on the face-to-face
2 requirement issue and issue an immediate halt
3 to the face-to-face requirement.

4 It is clear that home health
5 agencies and physicians want to provide high-
6 quality care to our patients. It's also clear
7 that CMS refuses to work with home health
8 agencies to modify the face-to-face
9 requirement so that agencies can be paid for
10 services rendered in good faith.

11 CMS has not required physicians to
12 complete the form, but has required home
13 health agencies to obtain the form to get
14 reimbursed.

15 Frankly, that's just plain
16 unrealistic. Physicians are already
17 overworked and underpaid by Medicare, and yet
18 are asked again to do one more task without
19 being reimbursed for it.

20 Let me ask you one question. Do
21 you remember your last visit to the physician,
22 how long did the physician actually spend time

1 with you, listening to your concerns and
2 actually talking to you?

3 Do you remember the amount of
4 paperwork the physician had to fill out,
5 including your prescriptions? How about
6 paperwork done by the physician's office
7 staff, including the Health Insurance
8 Portability and Accountability Act, HIPAA?

9 Imagine your physician trying to
10 fill out all this additional face-to-face
11 encounter paperwork for your parents or your
12 grandparents that may need home health
13 services. Overwhelming, isn't it?

14 Please refer to Exhibits 3 and 4.
15 You will see that members of the U.S. Senate,
16 56 Senators so far, are reaching out to CMS in
17 writing regarding this issue, however, and
18 with no surprise, Secretary Sebelius and CMS
19 is not only turning a deaf ear to home health
20 agencies, patients and physicians, but even to
21 members of Congress.

22 Thank you again for the

1 opportunity to testify here today. I look
2 forward to hearing from the SBA regarding this
3 issue and sincerely hope that CMS immediately
4 halts the face-to-face encounter requirement.

5 I'm available to answer any
6 questions. Thank you and God bless you.

7 MS. VASSAR: Thank you. And CMS
8 is listening to this hearing.

9 MR. LARA: Thank you.

10 MS. VASSAR: Mr. Robinson. Mr.
11 Robinson, are you on the line? Mr. Musheer
12 Robinson. Mr. Robinson, are you on the line?

13 (No response.)

14 MS. VASSAR: We'll come back to
15 Mr. Robinson if he's on the line later.

16 Mr. Pruitt. Adolphus Pruitt.

17 (No response.)

18 MS. VASSAR: Ellie Venafro. Is
19 she in the audience?

20 MR. ROBINSON: Musheer Robinson.

21 MS. VASSAR: All right. Mr.
22 Robinson. Mr. Robinson, are you on the line?

1 Please unmute your phone. Mr.
2 Robinson from Louisiana.

3 This is Dona. I believe his call
4 left.

5 MS. VASSAR: Oh, okay. I just
6 wanted to make sure he could hear.

7 Mr. Joyner, Danny Joyner.

8 (No response.)

9 MS. VASSAR: Mr. Joyner. I'm
10 trying to make sure it's not a technical
11 problem.

12 Paul Baumgarten.

13 MR. BAUMGARTEN: I'm here.

14 MS. VASSAR: Okay. Mr.
15 Baumgarten, we will go on with you. And your
16 issue is with FSSI/OFPP and GSA.

17 MR. BAUMGARTEN: Yes, ma'am.

18 MR. ROBINSON: Musheer Robinson,
19 from the NAACP.

20 MR. BAUMGARTEN: I'll begin.

21 MS. VASSAR: Okay.

22 MR. BAUMGARTEN: My company and

1 hundreds of other small and disadvantaged
2 businesses have been damaged by the GSA in
3 OMB's application of the Federal Strategic
4 Sourcing Initiative. What does the SBA intend
5 to do about it?

6 Good morning. My name is Paul
7 Baumgarten. I am representing ProSource
8 Packaging located in Houston, Texas. We are
9 an ISO-certified Hispanic, woman-owned small
10 business.

11 With emphasis, we are ISO-
12 certified and adhere to a high-quality
13 standard which is usually associated with
14 engineering companies, and is seldom
15 maintained by office products and services
16 contractors.

17 ProSource was awarded a GSA
18 Schedule contract under Class 75, Office
19 Products and Services.

20 The GSA, as directed by OMB has
21 instituted the Federal Strategic Sourcing
22 Initiative, known as FSSI, in the name of

1 generating cost savings to the Government.

2 However, what is occurring is a
3 wink-wink program under the guise of a blanket
4 purchase agreement issued to 15 select GCS
5 Schedule holders that is designed to generate
6 more revenue for the GSA while reducing
7 administrative overhead at the cost of
8 hundreds of businesses, thousands of private
9 sector jobs.

10 This economic genocide preserves
11 the GSA as an agency, while having little to
12 no net benefit to the taxpayer.

13 My company and hundreds of other
14 small and disadvantaged businesses have been
15 damaged by the GSA and OMB's application of
16 Federal Strategic Sourcing Initiative.

17 What does the SBA intend to do
18 about it?

19 Small and disadvantaged business
20 such as ProSource have invested thousands of
21 dollars to be able to participate in the GSA
22 Schedules contract program whereby we are

1 required to warrant our pricing and increase
2 our risk exposure.

3 In return, the Federal Acquisition
4 Regulations, in accordance with FAR, Part
5 6.102(d)(3) states that use of the multiple
6 award schedules issued under the procedures
7 established by the Administrator of General
8 Services, consistent with the requirement of
9 41 USC 259(b)(3)(A) for the multiple awards
10 schedule program of the General Services
11 Administration is a competitive procedure.

12 The reference to 41 USC is a
13 synonym for best value evaluation. Best value
14 consider a mix of criteria used by government
15 contracting officers in order to make an award
16 of a task or delivery order when using a GSA
17 Scheduled contract.

18 Criteria includes price,
19 technical, warranties, management approach and
20 experience. With the exception of price,
21 quality is the underpinnings to every other
22 form of best value consideration.

1 GSA has violated FAR Part 6 by
2 issuing a BPA without notifying all potential
3 515 Class 75 contractors. GSA is charging a
4 1.25 percent BPA facilitation fee, in addition
5 to the .75 percent industrial funding fee.

6 Since the basis of the ISFF has
7 been challenged in the past by persons such as
8 Congressman Tom Davis, is it anyone's guess as
9 to the legislative justification for the BPA
10 facilitation fee?

11 Additionally, the GSA instructed
12 those selected to participate in the GSA
13 FSSI/BPA to "Pad up" their micropurchase sales
14 by adding 2.5 percent, up to 30 percent
15 inflation to their purchase for the prices for
16 sales less than \$100.

17 It appears that FSSI is more of an
18 exercise in generating revenue and reducing
19 administrative overhead to preserve GSA
20 workforce than generating a savings through
21 competitive pricing, which was already
22 warranted by the Most-Favored Custom Clause by

1 all 515 contractors.

2 Most of the items GSA is
3 processing through the FSSI/BPA can be
4 obtained for less than through the remainder
5 of the class 75 contractors who have been left
6 to die on the vine.

7 Our company's ISO quality
8 certification helped our company earn an
9 exceptional rating by the GSA auditor. We are
10 the only -- I repeat -- the only office
11 equipment dealer in the entire United States
12 that holds this Quality Standard. That is why
13 we are Exceptional. We are exacting and
14 meticulous and professional.

15 If the GSA FSSI/BPA is resulting
16 in delivery orders costing more than if a
17 customer procured from the other Class 75
18 Schedule holders, then the other elements of
19 Best Value must be considered.

20 As an ISO-certified business, if
21 price is not the weighted Best-Value criteria,
22 which it could not be, since pricing is higher

1 in the FSSI/BPA, then why was ProSource not
2 considered with our stellar ISO quality
3 rating?

4 My company and hundreds of other
5 small disadvantaged businesses have been
6 damaged by the GSA and OMB's application of
7 the Federal Strategic Sourcing Initiative.
8 What does the SBA intend to do about it?

9 Our GSA sales have declined 24.4
10 percent, which has already led to the layoff
11 of one customer personnel in November. It is
12 projected that over 400 businesses in Class 75
13 will be put out of business and over 3,000
14 direct jobs lost.

15 If OMB and GSA propagate the FSSI
16 program across the entire GSA Schedules
17 program, it is predicted that 15,000 to
18 25,000 private sector jobs will be lost and
19 over 3,000 small and disadvantaged companies
20 will be put out of business.

21 Making matters worse, the GSA has
22 taken the wink-wink program to an entirely new

1 level. While formally stating the FSSI/BPA is
2 nonmandatory, the GSA has informal meetings
3 and correspondence with government agencies
4 and military activities to encourage them to
5 only use the GSA FSSI/BPA as its sole source
6 for office supplies.

7 The result has been memorandums
8 issued by all of the major agencies and DoD
9 activities directing sole source usage of the
10 GSA FSSI/BPA.

11 This is a blatant violation of FAR
12 Part 13, which states FAR 13.003, agencies
13 shall use simplified acquisition procedures to
14 the maximum extent practicable for all
15 purchases of supplies or services not
16 exceeding the simplified acquisition
17 threshold, including purchases at or below the
18 micropurchase threshold.

19 This policy does not apply if an
20 agency can meet its requirement using required
21 sources of supply under Part 8, example,
22 Federal Prison Industries, Committee for the

1 Purchase from People Who are Blind or Severely
2 Disabled, and Federal Supply Schedule
3 contracts.

4 GSA required the FSSI/BPA
5 participants to have Ability One status. Can
6 someone please show me where Ability One
7 status is entitled to more of a preferential
8 treatment than any of the economically
9 distressed or disadvantaged programs, Programs
10 the SBA invented and have ownership to
11 maintain?

12 Where is it in legislation that
13 Ability One is preferred over a woman-owned or
14 Service Disabled Veteran-owned or Native
15 American-owned small business?

16 Why were we discriminated against?
17 My company and hundreds of other small and
18 disadvantaged businesses have been damaged by
19 the GSA and OMB's approach -- I'm sorry --
20 application of a Strategic Sourcing
21 Initiatives? What does the SBA intend to do
22 about it?

1 Some FSSI/BPA contractors raised
2 their prices on their GSA schedules before
3 submitting their FSSI/BPA pricing. They did
4 this knowing that they were going to have to
5 offer additional concessions and discounts to
6 qualify for a GSA FSSI/BPA award, yet the GSA
7 turns a blind eye because the higher the
8 price, the more revenue is generated through
9 the Industrial Funding Fee and BPA
10 Facilitation Fee.

11 Why would a company of two people,
12 operating from an apartment in the Bronx be
13 awarded a Strategic Supply Contract?

14 OMB, in a letter dated May 20th,
15 2005 by Mr. Clay Johnson directed that, A,
16 Strategic Sourcing Governance, a charter
17 should be developed outlining the members,
18 roles, responsibilities and operations of an
19 agencywide Strategic Sourcing Council and any
20 commodity councils to be formed.

21 Would such an agencywide Strategic
22 Sourcing Council look favorably on this fly-

1 by-night microcompany as one that is equipped
2 to fill agencywide needs?

3 Making matters worse, two of the
4 15 GSA schedule holders awarded a GSA FSSI/BPA
5 were charged with defrauding the U.S.
6 Government. Office Depot and Staples settled
7 with the DOJ approximately two years ago, yet
8 gets rewarded with award of a GSA FSSI/BPA.

9 Office Depot just published an
10 announcement at monster.com, looking for a new
11 GSA business manager, if anyone is interested.

12 I guess I need to throw someone
13 under the bus to convince the DOJ that they
14 are taking corrective action while the C level
15 executives get fat.

16 Office Depot was awarded \$123
17 million under the GSA FSSI/BPA. Staples was
18 awarded \$119 million.

19 It sends a message that it is all
20 right to defraud the U.S. Government, even at
21 the expense of small and disadvantaged
22 businesses.

1 My company and hundreds of other
2 small and disadvantaged businesses have been
3 damaged by the GSA and OMB's application of
4 the Federal Strategic Sourcing Initiative.
5 What does the SBA intend to do about it?

6 Thank you, Panel. Please give it
7 your best effort. We need it.

8 MS. VASSAR: We will.

9 MR. BAUMGARTEN: Appreciate it.

10 MS. VASSAR: Thank you, Mr.
11 Baumgarten.

12 Mr. Robinson.

13 MR. ROBINSON: Yes.

14 MS. VASSAR: All right. We are
15 ready to hear your testimony.

16 MR. ROBINSON: Thank you very,
17 very much.

18 MR. JOLLY: And, Mr. Robinson's
19 testimony is directed at SBA/HUD 8(a) Program.

20 You may begin.

21 MR. ROBINSON: Thank you very
22 much, and I want to than all of the agencies

1 that have come behind the Ombudsman person to
2 be -- to considered the testimony of small
3 businesses.

4 My focus is specifically on the
5 State of Louisiana which is its own world. We
6 have \$20 billion --

7 MS. VASSAR: Mr. Robinson. Excuse
8 me.

9 MR. ROBINSON: Yes.

10 MS. VASSAR: Could you speak a
11 little louder.

12 MR. ROBINSON: Okay.

13 MS. VASSAR: Thank you.

14 MR. ROBINSON: Okay. We have \$20
15 billion contracting in Louisiana that is
16 coming through Federal funding, and so my
17 comments are specific to Louisiana.

18 Right now there's a systematically
19 -- the systematically negative experience of
20 8(a) disabled veterans, HUB, DBE and other
21 SBEs trying to participate in the \$20 billion
22 of Federal Government project funding in

1 Louisiana, and this is being facilitated
2 through FEMA, the VA, Army Corps, the EPA, the
3 Department of Energy, GSA, DOT, DOD and HUD.

4 Number two, there's a lack of
5 commitment, that's the way our community feels
6 and it appears to be, to 8(a), Disabled
7 Veterans, HUB, DBE and other SBE's
8 participation by Federal agencies, as well as
9 their state and local government funding
10 recipients in Louisiana.

11 Three, specifically, there are too
12 few 8(a) Disabled Vets, HUB and other SBE's
13 set-aside state opportunities in Louisiana, as
14 government contracting officers have no
15 strategic plan (telephone interference) in
16 creating 8(a), Disabled Veterans, HUBs and/or
17 women-owned business set-asides.

18 Four, prior Government experience
19 is required by 8(a), Disabled Vets, HUB and
20 other SBES trying to bid on the set-aside
21 opportunities, which is a Catch-22.

22 How do you get a government -- the

1 Federal Government-funded opportunities if
2 you're required to previously have that
3 government experience?

4 Number five. Many of the setting-
5 aside solicitations that are finally developed
6 are actually cancelled before or immediately
7 after the awards.

8 Here are my recommendations.
9 First, SBA should sign an interagency
10 agreement with every Federal agency that is
11 providing funding for either a direct Federal
12 Government agency project or as a participant
13 in a State and/or local capital
14 project/program.

15 And in that agreement, they should
16 be specifically delineate the 8(a) and DBE and
17 HUB set-asides, as well as SBE goals.

18 Enforcement provisions would
19 include termination of the funding to the
20 agency receiving funding and/or termination to
21 the prime and tier one and any other tier of
22 contractors that does not comply with the set-

1 aside contracting targets that would be part
2 of every government funding award.

3 Number two. To make sure that in
4 Louisiana, that there are 8(a), Disabled
5 Veteran, HUB, women-owned businesses, an
6 inclusion agreement that has specific goals
7 that the SBA would create with the interagency
8 agreement, with the Corps, 8(a), HUB, EPA,
9 FEMA, DOD, GSA and DOT and direct federal
10 agency programming as well as the programming
11 funded by these agencies.

12 We have to have this very specific
13 codified agreement.

14 Third, further, to manage this
15 interagency process in Louisiana, the SBA
16 needs to hire a Special Master that would help
17 create and enforce these specific SBE, 8(a),
18 Disabled Veterans, HUB contracting goal and
19 cause all Federal agencies and state and local
20 entities receiving Federal funding should
21 comply with all provisions of the FAR,
22 including personal surety as a qualifying

1 surety instrument.

2 Right now a fabulous state
3 director, he can't get anything done. Just as
4 HUD had to create Special Masters to take over
5 housing authorities. We have to have a
6 Special Master to take over the Federal
7 contracting funding role in Louisiana. We are
8 not hitting any targets.

9 Four, we recommend that every
10 contracting officer must file a project
11 program 8(a), DBE, HUB and Disabled Veterans
12 utilization strategy with the State SBA.

13 In the case of Louisiana, this
14 report should be updated on a quarterly basis
15 and will be submitted to both the SBA, State
16 director and Special Master, as well as to an
17 independent Louisiana SBA oversight committee.

18 This SBA committee was appointed
19 by the regional director and state director.

20 In Louisiana, the performance by
21 contracting officers would be benchmarked
22 against the plan that is approved by the

1 Special Master and State Director and
2 oversight committee and the various contracts
3 would be monitored on a monthly basis.

4 Contracting officers would be
5 given the authority to terminate any
6 contractor that over a six-month period does
7 not meet the 8(a), the DBE, HUB zone, HUB, or
8 Disabled Veteran goals. They have benchmarks
9 that have been set in their contacts.

10 If contracting officers do not
11 actively enforce the 8(a), DBE, HUB zone, HUB
12 or Disabled Veteran goals, the SBA Special
13 Master could recommend to the contracting
14 officer's agency that they be disciplined
15 and/or removed from their contract officer
16 assignment.

17 The 8(a), DBE, HUB and/or Disabled
18 Veterans goals must be strenuously enforced,
19 just as the Buy America provisions of the
20 American Recovery Reinvestment Act work.

21 Five, staffing Special Master
22 would be an inclusion consultant and would be

1 funded by a one to two percent set-aside in
2 every contract.

3 The consultant, under the
4 direction of the Special Master would help in
5 identifying 8(a), Disabled Vet and HUB zone
6 contract opportunities, help Federal and
7 State, local government agencies receiving
8 Federal funds to develop specific bid packages
9 that meet the capacity of the 8(a), Disabled
10 Vet and HUB contractors.

11 Three, help prime contractors to
12 develop its packages that will permit 8(a),
13 Disabled Vet, HUB and other SBEs to compete
14 for business in projects forward under
15 Federal funding, provide client monitoring
16 reporting to the State SBA director, and in
17 Louisiana, this report would also need a
18 Special Master oversight committee, which
19 would have the power to terminate a contractor
20 or even a project for noncompliance for SBA
21 specific project program agreement with any
22 Federal and/or State and local agencies who is

1 not in compliance with the SBE, 8(a), Disabled
2 Veteran and HUB contracting goal.

3 Finally, provide compliance
4 monitoring for small contractors, contract
5 provisions to make sure that the contract
6 disclosures are accurate.

7 This one to two percent
8 (telephonic interference) of set-aside piece
9 is no big deal because, if we increase the
10 number of bidders we will recapture more of
11 that.

12 There are plenty of economic
13 studies on the question of increasing bidder
14 participation and its impact on pricing.
15 We're not getting the bidder participation.

16 We are getting people screened-out
17 by bogus enrollment processes that are set by
18 the contractors that are hired to, like in the
19 case of the VA, here in Louisiana, there's an
20 enrollment process that Clark McCarthy had
21 that's screening out almost all of the DBE,
22 SBEs, et cetera for all kinds of reasons like

1 not having an EMR due to worker's comp mod
2 that is below one.

3 Small businesses can't even hope
4 to achieve that domain, but they've eliminated
5 contractors with .85 to .90 that haven't had
6 an accident in ten years. So, unless we have
7 this sort of monitoring and investment made in
8 it, it ain't happening.

9 Six, the sureties require the SBA
10 must see to it that the FAR safe harbor for
11 personal sureties enforced at the State and
12 local government level on any program project
13 receiving Federal funding.

14 The Treasury listed sureties
15 essentially red-lined SBEs, 8(a)'s, Disabled
16 Vets, HUB and other diversity contractors. In
17 many cases the only option available to them
18 is the personal surety market.

19 In the State of Louisiana, the
20 State Insurance Commissioner who is an elected
21 position has basically opined that personal
22 surety can't even be used on Federal

1 contracts.

2 So, I don't understand how, on one
3 hand, we can uphold the Buy America
4 provisions, but on the other hand, not uphold
5 the FAR for any personal surety. The SBA has
6 to be very aggressive on this.

7 Seven, the banks must begin
8 accepting Federal contracts as collateral for
9 SBA loans and bonds.

10 In our -- in Louisiana, the banks
11 are not accepting Federal contract risks, even
12 though we have to have a whole other different
13 kind of approach here, especially since these
14 banks have been bailed out by the Federal
15 government.

16 The SBA can begin to make direct
17 loan which it has at one in the past, and it
18 can also work through entities like the CDFIs
19 and other entities that are actually in the
20 communities, and they need an opportunity to
21 have access to Treasury to be able to make
22 loans.

1 The current situation with the
2 banks, they are not making any loans. This
3 year there has not been ten loans to MBE firms
4 in the whole state of Louisiana, not ten.
5 This is atrocious.

6 Number eight, FEMA and Army Corps
7 need to develop preapproved communities of
8 local small, 8(a), Disabled Vet and HUB
9 contractors that can be called upon to
10 mobilize in response to disaster.

11 They also must develop a rate
12 sheet and a term of payment schedule for these
13 SBE contractors so that the massive number a
14 large general-contractor-caused bankruptcies
15 of MBEs never happens to FEMA on a FEMA watch
16 again.

17 Right now basically if you're a
18 small minority contractor with any kind of
19 qualification (telephonic interference) work
20 on the third and fourth tier peak end demand
21 whereas contractors, big contractors paid like
22 \$25 a ton to move something that a small

1 contractor gets so few adjustments that we've
2 had literally hundreds of firms go bankrupt in
3 working with the Army Corps and these other
4 guys in post-disaster situations.

5 Too few mentor/prot,g, agreements
6 and joint ventures are being developed in
7 Louisiana. It just takes too darned long for
8 anything to be done. Tremendous opportunities
9 to increase the participation by creating
10 these mentor/prot,g, relationships and we need
11 to reassess how they are done, and the fact
12 that there can only be like one with the
13 nature of contract to expand this program,
14 and work with the State programs like in
15 Louisiana that have a mentor/prot,g,.

16 Finally, the Corps loan programs
17 of the SBA, including the 7(a) programs has
18 achieved very little penetration for small
19 business community in Louisiana, most in need
20 of liquidity.

21 So, my complaints are CDFIs are
22 fully committed to serving small and minority

1 businesses. They have to be involved in it,
2 too, as well as being they have to be granted
3 expedited approval to serve the SBA and its
4 loan originators and servicers with full
5 parity with bank and other SBA lenders, not at
6 this micro level which they currently are
7 proposing, where the CDFI is involved, their
8 loan guarantees are -- are -- and their
9 structure (telephonic interference) with the
10 banks.

11 So, no CDFIs are going to
12 originate anything if they can't have the
13 power to do relationship.

14 C, we want the SBA Administrator
15 to facilitate a formal bank merger commentary
16 and meetings between small business advocates
17 such as the NAACP and bank regulators
18 including the Chairman of the FDIC to insure
19 that banks that have not complied with CRA, or
20 have not cooperated with the SBA programming
21 address these issues before a merger is
22 approved by the regulators.

1 We've been trying to set up a
2 meeting with the FDIC since January related to
3 Hancock and Whitney.

4 Hancock and Whitney Banks are in
5 total contempt of any kind of CRA activity
6 and, unless we can get enforcement of CRA with
7 these banks that have taken billions and
8 billions of our TARP money like
9 Hancock/Whitney, it's not going to work.

10 So those are my recommendations.
11 And I still continue to make them. We are
12 front-line in Louisiana at the NAACP, with our
13 many, many thousands of members working with
14 businesses in every parish and these
15 observations come from many years of working
16 in these fields and not getting any results
17 from Federal government agencies.

18 We haven't created a single black
19 millionaire in this town, in this State around
20 Federal contracting and created a huge
21 sustainable growth business in years. It's a
22 small group of people that have to get and

1 this is (telephonic interference) this many
2 years after Katrina and Rita.

3 Thank you.

4 MS. VASSAR: Thank you, Mr.
5 Robinson. I would suggest that you prioritize
6 the suggestions that you have. I counted
7 about 15. Now, I want you to do this:
8 Prioritize those things, those immediate
9 actions that you're requesting because trying
10 to --

11 MR. ROBINSON: Yes, ma'am.

12 MS. VASSAR: -- trying to figure
13 it out gets very complicated. So, just
14 prioritize in bullet form whenever you talk to
15 us -- to me again. Okay?

16 MR. ROBINSON: Thank you. We'll
17 do that.

18 MS. VASSAR: All right.

19 MR. ROBINSON: Thank you very
20 much.

21 MS. VASSAR: So it will be clear.

22 MR. ROBINSON: Yes, ma'am.

1 MS. VASSAR: Specifically what
2 you're asking. Thank you again for your
3 testimony.

4 MR. ROBINSON: Thank you. Thank
5 you.

6 MS. VASSAR: Mr. Pruitt, are you
7 on the line?

8 MR. PRUITT: Yes, I am.

9 MS. VASSAR: All right. Mr.
10 Adolphus Pruitt, and your issue is dealing
11 with SBA's Capital Access.

12 MR. PRUITT: I can barely hear
13 you. Say that again. Just on line.

14 MS. VASSAR: All right. We are
15 ready for your testimony. SBA is represented.

16 MR. PRUITT: Thank you.

17 The Small Business Administration
18 recently announced two new programs with the
19 intent of increasing lending to businesses in
20 disadvantaged areas and to those headed by
21 minorities and women.

22 These new advantage initiatives

1 were reportedly aimed directly at getting more
2 loans into the hands of the small business
3 owners to provide them with the capital that
4 they need.

5 The Small Loan Advantage is
6 relying on 630 of the SBA's preferred lenders
7 to provide loans to the small community
8 businesses in low to moderate-income
9 neighborhoods of designated cities. Lending
10 to these small business has dried up, and the
11 impact is greater in underserved communities,
12 including those among minorities, women and in
13 the rural areas.

14 Unfortunately, these initiatives
15 have little or no impact on the targeted
16 markets if the preferred lenders do not
17 participate in the program. The impacted
18 community needs a vehicle for accessing these
19 target programs when preferred lenders fail or
20 refuse to participate.

21 In addition, the preferred lenders
22 that refuse to offer the programs should lose

1 their preferred lending status, for they are
2 contributing to the demise of the protected
3 class and red-lining the very communities the
4 initiative is trying to assist.

5 As a matter of fact, we contend
6 that their actions are in direct violation of
7 Title VI of the Civil Rights Act.

8 In January of 2007 the GAO
9 released its findings on the examination of
10 the relationship between poverty and adverse
11 social outcomes such as poor health outcomes,
12 crime, labor force attachment and the link
13 between poverty and economic growth.

14 The GAO research suggested that
15 individuals living in poverty face an
16 increased risk of adverse outcomes such as
17 poor health and criminal activity, both of
18 which leads to reduced participation in the
19 labor market.

20 Economic-based theory holds that
21 neighborhoods, if they are to prosper
22 economically, income, that is, salaries from

1 jobs must enter the local economy and become
2 income to the neighborhood residents, and they
3 are relying on these 630 SBA-preferred lenders
4 to provide loans to the small businesses in
5 their communities in order to provide them
6 employment opportunities.

7 When this does not happen, these
8 neighborhoods and the residents in them will
9 continue to suffer from the periods of
10 catastrophic employment decline which are felt
11 well beyond the loss of work and income for
12 those directly involved. It also affects
13 those local neighborhood shops, those
14 neighborhood businesses and service providers.

15 It is critical that the initiative
16 with impact provides a vehicle for the
17 targeted markets to access the products when
18 the traditional methods fail or refuse to
19 participate, and such failures or refusals
20 should have repercussions, other than those
21 repercussions that are felt by the protected
22 class and the communities they call home.

1 What happens here in the City of St. Louis and
2 the State of Missouri is that the small
3 business communities that we represent, when
4 they hear about it, it's just like they become
5 elated and they finally think someone is
6 reaching out to give them some hope, only to
7 go out and seek the access to these sorts of
8 initiatives, these sort of funding vehicles
9 and to find that the very lenders who have
10 refused to lend them money under any
11 circumstances have also refused to offer the
12 products such as these initiatives for them
13 within their communities.

14 Therefore, as far as they are
15 concerned, the initiative does not exist. It
16 makes absolutely no sense to have a vehicle
17 that is to provide a lifeline to a business,
18 especially a small minority business in the
19 disenfranchised community who are in the most
20 desperate need of the capital, and the vehicle
21 to exist and not have the ability to access it
22 from any lending institution within their

1 community or within their State.

2 There has to be some other way for
3 these initiatives to reach the people who are
4 most in need and provide them access to that
5 capital when the preferred lender refused to
6 take on the program, and in addition no
7 preferred lender, to have the status of being
8 a preferred lender and have the opportunity to
9 take preferential treatment and decide which
10 initiatives they will take on and which
11 initiatives they won't offer to the community.

12 Again, we think is a common case
13 of red-lining all over again, and I appreciate
14 your time.

15 MS. VASSAR: Thank you, Mr.
16 Pruitt, and you should know that the Office of
17 Capital Access is part of this hearing.

18 MR. PRUITT: Thank you.

19 MS. VASSAR: Ms. Venafro.
20 Venafro.

21 MS. VENAFRO: Yes. Thank you.
22 Venafro. Ms. Ellie Venafro.

1 MR. PRUITT: Adolphus Pruitt.

2 MS. VASSAR: All right.

3 MS. VENAFRO: Thank you.

4 MS. VASSAR: You are addressing an
5 issue from CPSC, right?

6 MS. VENAFRO: Correct.

7 MS. VASSAR: All right. You can
8 begin.

9 MS. VENAFRO: Thank you.

10 I run a small business based in
11 Richmond, Virginia, called Tots on the
12 Go Rentals where we provide short-term rentals
13 for parents needing quality baby equipment
14 such as cribs, high chairs and strollers.

15 We currently have 19 locations
16 across Virginia, South Carolina, North
17 Carolina and Utah. We have been in business
18 not quite two years now, and we are members of
19 the Baby Travel Pros, an association of
20 independent baby equipment rental companies
21 that currently service approximately 60 rental
22 companies in the U.S. that are members, and

1 another 50 rental companies in the U.S. that
2 are not members.

3 What we would like to address is a
4 concern regarding the final ruling December
5 28th of 2010 requiring replacement of all
6 full-size and nonfull-sized cribs from the
7 Consumer Product Safety Commission.

8 We acknowledge the need for higher
9 standards in the development of cribs. This
10 is why we, Tots on the Go Supply are covered
11 with only commercial grade cribs from
12 companies from Foundations, an LA baby
13 company. These are the same type of cribs
14 that hotels and day care centers use as well.

15 What does concern me regarding
16 this ruling and the rest of our inventory is
17 that our rental companies are expected to
18 replace our current inventory of cribs 18
19 months earlier than the day care centers and
20 hotel industries.

21 The timing is horrible for us and
22 the financial impact will be devastating if we

1 are not allowed some time to phase in the new
2 inventory of cribs.

3 Under Part 1219.1, paragraph
4 (b)(2) of the ruling, child care facilities,
5 family child homes and places of public
6 accommodation affecting commerce are required
7 to have all their cribs replaced by December
8 28, 2012.

9 However, under the section, Part
10 (b), it states that, one, "Except as provided
11 in paragraph (b)(2) of this section,
12 compliance with this Part 1219 shall be
13 required on June 28, 2011, and applies to the
14 manufacturer, sale, contract for sale or
15 resale, lease, sublet, offer, provision for
16 use, or other placement in the stream of
17 commerce of a new or use full-sized baby crib
18 on or after that date."

19 This means that our rental
20 companies must replace all our cribs by the
21 end of June this year to be compliant, while
22 the other industries, hotels and cribs --

1 hotels cribs -- other hotels and day care
2 centers have until December of next year.

3 Our rental association, Baby
4 Travel Pros, has been in contact with the U.S.
5 Consumer Product Safety Commission to confirm
6 the expectation that rental companies be
7 compliant by June 28th, 2011, versus the
8 December 28, 2012 as that of the hotels and
9 day care centers.

10 We are not retailers. We do not
11 sell cribs. We essentially provide the same
12 services as a hotel would by providing a crib
13 for a short amount of time.

14 If we are all forced to replace
15 our entire inventory by June, this means
16 anywhere from \$3,000 to \$30,000 in expense for
17 a given company. This just isn't feasible for
18 many of us.

19 There are less than a handful of
20 manufacturers that supply these portable cribs
21 that all of us, including the hotels and day
22 care centers are relying on for supplying us

1 with inventory.

2 We have been in touch with the
3 manufacturers consistent and the latest one of
4 our manufacturers will not have available a
5 crib until August, and some of the other
6 companies that we use, they will not -- they
7 are undergoing testing and will not have cribs
8 available by this time, either.

9 When these new cribs do come
10 available it is very likely they won't have
11 enough inventories to supply all of us in the
12 industry.

13 Several of us -- and our business
14 is very seasonal -- and 80 percent of our
15 business is done during the summer months, we
16 are very concerned that we won't have
17 inventory to supply orders that we are already
18 getting for our very busy season that the
19 stock won't be available through these months.

20 Another concern is the cost of
21 having to replace our entire stock in such a
22 short notice. These cribs cost approximately

1 \$400 apiece and our association members
2 average from anywhere from to 200 cribs at
3 these locations, leaving a cost of, as I said
4 before, \$3,000 to \$30,000, if not upwards of
5 \$80,000.

6 It is not feasible for our small
7 business owners consisting of only physically
8 no more than five employees, if even that, to
9 finance to such a large extent in such a short
10 amount of time.

11 Several of our member companies
12 replacement of their cribs already which is a
13 (telephonic interference) drop-side cribs were
14 deemed unsafe. These new cribs must be
15 replaced all over again, which will be an
16 additional expense these companies cannot
17 afford.

18 All we are asking is for an
19 extension to the December 2012 replacement
20 date as the other industries are able to have.
21 We don't see any reason why we should be
22 required to comply with an earlier date than

1 other industries supplying the same equipment.

2 MS. VASSAR: Thank you, Ms.
3 Venafro, for your testimony, and I think
4 you've already submitted a form to us, right?

5 MS. VENAFRO: I have, yes.

6 MS. VASSAR: Earlier than this
7 hearing?

8 MS. VENAFRO: Right.

9 MS. VASSAR: All right. Thank
10 you.

11 MS. VENAFRO: Thank you for your
12 time.

13 MS. VASSAR: We will hear from Mr.
14 -- is Mr. Danny Joyner on the phone?

15 MR. JOYNER: Yes, ma'am.

16 MS. VASSAR: All right. Mr.
17 Joyner, your issue is with OSHA?

18 MR. JOYNER: Yes, ma'am.

19 MS. VASSAR: All right. You can
20 begin your testimony.

21 After Mr. Joyner, I want everybody
22 to stand up and stretch a little bit. We are

1 just -- just a few minutes behind. We are
2 just a little behind schedule, about five or
3 ten minutes.

4 So, Mr. Joyner, you can begin.

5 MR. JOYNER: I come before the
6 court today on behalf of small businesses in
7 Alabama and manufacturers in Alabama, and the
8 concern is the OSHA initiatives and emphasis
9 programs in the current, you know, we have
10 underway in the State of Alabama.

11 I know we have two clients now
12 that have been inspected by -- violations
13 issued to them by OSHA in their home because
14 they are small business people.

15 They are not -- none of these
16 companies employ over ten people and what we'd
17 like to ask the National Ombudsman to do is to
18 cease and desist with -- ask them to please
19 cease and desist with these excessive fines
20 against small businesses here in the State of
21 Alabama.

22 As most of you know, we've had a

1 natural disaster to occur here. We've even
2 had -- hello. We've had a national disaster
3 that happened here when a tornado in
4 Tuscaloosa and Montgomery County, and we're
5 actually having complaints of OSHA
6 representatives going on the other side and
7 intervening with where there's humanitarian
8 aid provided by church groups and all that.

9 They are actually telling them
10 that they're going to be fined, and we're
11 talking about, you know, nonprofit people.
12 They are not even businesses.

13 Most of these complaints are
14 coming from the Birmingham area. I want to
15 make that clear. It's just -- I did submit a
16 report to you and I'm going to try to make it
17 as short and sweet for you.

18 We just seek relief for these
19 small businesses that can't afford attorneys
20 to represent them and they are actually, under
21 the OSHA act of 1970, never was, in my reading
22 of it, was it intended to persecute small

1 businesses under the color of law without any
2 recourse whatsoever.

3 Most of these people are just
4 going to go out of business because they can't
5 afford the fines. And I would say this, these
6 companies have changed that have been cited,
7 one of them in particular never -- both of
8 them, accident/injury rate is exemplary.

9 Not accidents, no injuries. OSHA
10 had no (telephonic interference) cause
11 whatsoever to enter these sites. They only
12 had the direction of the -- you know, the
13 officer telling them -- and we have seven
14 affidavits and one of them filed for --
15 actually those officers supposedly threatening
16 to have them jailed if they lied to them
17 which, if they've got an arrest file, I don't
18 know about it.

19 So, that's why we're coming and
20 asking the National Ombudsman to please step
21 in between here and help these small
22 businesses in Alabama that cannot afford

1 representation.

2 And here's the problem. You know,
3 the OSHA officer is right that the system is
4 fixing this, they write the citations, then it
5 goes to -- they're paid by the Government.
6 They send it to the Solicitor's Office that
7 represents the Department of Labor and they
8 are protected by the Government, but the
9 little guy down here on the bottom, he has --

10 Anyway, that's -- I'm going to
11 leave it there. You have my written statement
12 and we just seek relief, especially in this
13 time of national disaster here in Alabama, and
14 ask OSHA to please define an emphasis --

15 Are you there, Ma'am?

16 MS. VASSAR: Yes, we can hear you.
17 It's people coming on the line and leaving.

18 MR. JOYNER: Yes, I'm sorry.

19 MS. VASSAR: No, I'm sorry. It's
20 just --

21 MR. JOYNER: But that's -- we're
22 just trying to help. We representing small

1 businesses in Alabama. We've been here 20
2 years, and we understand that everybody -- if
3 you have a problem to solve, then I think OSHA
4 -- I mean, if they didn't have any hospital
5 cases, not one, no fatalities, no injuries at
6 all, and they're going into these -- and we
7 asked -- there's one case in North Alabama
8 where a canopy company was fined \$200,000.

9 \$200,000. These people cannot
10 stand -- you know, the economy as it is, and
11 the persecution by -- under the auspices of a
12 government agency.

13 MS. VASSAR: Thank you, Mr.
14 Joyner, and we have your paperwork.

15 MR. JOYNER: Thank you, ma'am.

16 MS. VASSAR: We have all of you in
17 the disaster areas in our prayers.

18 MR. JOYNER: God bless you. Thank
19 you.

20 MS. VASSAR: Thank you.

21 All right. Would everybody just
22 take a minute and stretch.

1 (Whereupon, the above-entitled
2 matter went off the record at 10:57 a.m. and
3 resumed at 11:00 a.m.)

4 MS. VASSAR: All right. I think
5 we have gotten our blood circulating again.
6 So we are -- when -- whenever our people
7 present get back to their seats we will resume
8 so we can hear the other -- other testimonies.

9 All right. We are going to resume
10 at this point. All right. We will call back
11 to order and resume the testimony, if everyone
12 is ready.

13 (Off-record comments.)

14 MS. VASSAR: We heard, when we
15 went off the regular schedule, my schedule, we
16 have heard from Mr. Baumgarten. The last time
17 he dealt with FSSI.

18 There are several people who are
19 going to testify on that issue and we will
20 begin again with Ms. Bonnie Whittaker. Is Ms.
21 Whittaker in the audience?

22 Thank you, Ms. Whittaker.

1 Representing Adams Marketing.

2 MS. WHITTAKER: Yes, ma'am.

3 MS. VASSAR: Thank you.

4 MS. WHITTAKER: Yes. Hello. My
5 name is Bonnie Whittaker and I'm a vice
6 president in charge of GSA schedules for Adams
7 Marketing where I've been employed for over 25
8 years.

9 We are a small woman-owned
10 business in Ashland, Virginia, and we've
11 successfully partnered with GSA and the
12 Federal Government customer for over 27 years,
13 selling office supplies at cost savings for
14 taxpayers and providing excellent customer
15 service.

16 Now, through no fault of our own,
17 we are experiencing employee layoff's, reduced
18 income and the threat of losing business
19 because of the Federal Strategic Sourcing
20 Initiative known as FSSI.

21 The FSSI, as a blanket purchase
22 agreement that was awarded by GSA to only 13

1 socioeconomic classified small businesses out
2 of 523 current small business schedule
3 holders, and to two large businesses.

4 It's costing hundreds of small
5 business jobs already and is not demonstrating
6 the savings that it has proposed.

7 There are approximately 500 small
8 businesses that are protesting this award
9 through the Senators, Representatives, Small
10 Business representatives and committees, while
11 reaching out to GSA and the agencies that are
12 using the FSSI vehicle.

13 Even though the FSSI is deemed
14 nonmandatory by GSA, Mr. Dan Gordon, the
15 Administrator of Office of Federal Procurement
16 Policy with the Executive Office of the
17 President has strongly urged the directors of
18 top agencies to mandate the use of the FSSI to
19 all of its employees, and we have many
20 examples for review, if you'd like them.

21 When Mr. Gordon was asked by one
22 of my congressmen whether or not a study of

1 the potential negative impact that FSSI may
2 have on small businesses across the country
3 had been done, he simply replied, "No."

4 Mr. Jack Kelly with OMB has stated
5 that the FSSI is a new initiative and it's a
6 learn-as-you-go process.

7 This seems like a very
8 irresponsible and reckless approach to solving
9 the issues that were stated by a GAO study
10 that FSSI is supposed to solve at the risk of
11 hundreds of small businesses.

12 When asked for our corporate
13 success story at a meeting once, the speaker
14 for OFPP named Harley Davidson, John Deere,
15 Rolls Royce and other car manufacturers as
16 being corporate success stories.

17 I feel that comparing office
18 supplies to these corporations is not really
19 comparing apples to apples.

20 Our small businesses can provide
21 the same solutions to the deficiencies
22 reported by GAO in their study by providing

1 services -- the following services:

2 Achieving savings for customers,
3 capturing data for the agencies, ensuring
4 compliance with existing mandates and acts of
5 the multiple award schedules, the flexibility
6 to conform to each agency's business
7 practices, and requirements that we provide an
8 easy and user-friendly means of ordering office
9 supplies.

10 The partner-in-crime to the FSSI
11 is the moratorium on the office supply
12 Schedule 75, which freezes it to any new
13 schedules and it projects that, at the end of
14 the moratorium most of the remaining schedule-
15 holders will be out of existence.

16 This is -- will happen in
17 approximately two years. This is an excerpt
18 from a Power Point presentation by Mr. Jeff
19 Koses of GSA, outlining the future of the
20 small business schedule-holders.

21 An overview of a 24-month
22 postponement, the main thing that stands out

1 in this overview is that Schedule 75 sales
2 outside of the FSSI/BPA's are projected to
3 decline as the use of the FSSI/BPA's increase.

4 New -- also they state that new
5 entrants will have a very difficult time
6 succeeding. The FSSI/BPA's are now being used
7 as a first or preferred vehicle.

8 At the end of this, the closing
9 notice was sent out on September 1, and then
10 it says GSA will redeploy its contracting
11 resources to improve other schedules.

12 So, as you can see from the above
13 overview, we have less than two years at the
14 most. GSA's suggestion to me was to look into
15 other lines of business or team up with a
16 large business like Office Depot if I want to
17 continue selling office supplies to the
18 Federal Government.

19 The FSSI, as it is, and the
20 postponement and moratorium on Schedule 75 is
21 the combination being used to totally destroy
22 the present remaining small business 75

1 Schedule-holders.

2 The Federal Government's goal is
3 to award 23 percent of all Federal contracts
4 to small business. With this, the above
5 postponement and FSSI, this will not be met.

6 In closing, I feel that the very
7 reason that there is a Small Business
8 Administration is being tested. I've been
9 told by some SBA representatives they do not
10 have the power to challenge OMB, at least on
11 this issue.

12 By the time FSSI fails, which an
13 impartial study would prove that it would,
14 there will be hundreds of small business
15 employees in the unemployment line and small
16 businesses in bankruptcy.

17 Although the power of the
18 Executive of the President is forcing this
19 initiative on the Federal Government customers
20 who are not satisfied at all, someone has to
21 step up for us to reverse this unfair Act. If
22 not SBA, then who?

1 Thank you very much.

2 MS. VASSAR: Thank you, Ms.

3 Whittaker.

4 Our next testimony is dealing with
5 the same issue. Mr. Jerry Taylor, are you on
6 the line? Mr. Taylor.

7 (No response.)

8 MS. VASSAR: We will go to Susan
9 Daniels. Ms. Daniels.

10 MS. DANIELS: Yes.

11 MS. VASSAR: Are you on the line?

12 MS. DANIELS: I am. Yes, ma'am.

13 MS. VASSAR: All right. You can
14 begin your testimony dealing with NOAA. You
15 represent Ripple Cove Charters.

16 MS. DANIELS: I do. Should I go
17 ahead and start?

18 MS. VASSAR: Yes.

19 MS. DANIELS: Okay. My name is
20 Suzi Daniels. I own Ripple Cove Charter, a
21 full-service charter fishing business in the
22 State of Alaska.

1 Gustavus is a small town of about
2 350 residents, and is well-known as a world-
3 class halibut sport fishing destination.

4 Similar to other Southeast Alaska
5 communities, halibut fishing is the
6 predominant revenue-generating industry in our
7 town.

8 I am testifying today on behalf of
9 a group of gravely concerned small businesses
10 fighting for survival. Our group includes
11 sport-fishing businesses, lodges, local
12 merchants, airlines and fish packers.

13 We've united to test the 37-Inch
14 Rule rescinded for Southeast Alaska. Under
15 the 27 Inch Rule, guided anglers will no
16 longer be able to retain one halibut per day
17 of any size.

18 On March 19th, just six short
19 weeks from the start of our season when most
20 bookings are deposited, and the anglers that
21 made them are becoming progressively more
22 eager to catch a fish of a lifetime or bring

1 home some of the best eating fish in the
2 world, an IPHC recommendation prohibiting a
3 guided angler from retaining anything larger
4 than a 37-inch halibut, which is about 22
5 pounds, was approved as law.

6 South-Central Alaska remains
7 untouched at two halibut per person per day of
8 any size.

9 We are concerned. No economic
10 impact analysis was done for the 37-Inch Rule.
11 The rule does contain an analysis matrix. The
12 matrix was developed for the Catch Sharing
13 Plan, a completely different harvest tool than
14 the 37-inch rule.

15 It doesn't end there. The
16 analysis doesn't show how many jobs or how
17 much revenue will be lost, or even attempt to
18 predict how many small businesses will have to
19 close their doors as a direct result of this
20 implementation.

21 None of these statistics are
22 necessary since the matrix assumed that the

1 same number of anglers will come to Southeast
2 Alaska as did in 2010 to catch the same number
3 of halibut, regardless of the maximum size
4 limit that is imposed.

5 This entire assumption is flat-out
6 wrong, and renders the analysis useless as any
7 sort of a tool to predict its results.

8 On May 2nd we learned that NFMPC
9 will be reconvening to beef up the analysis
10 matrix so that it can stand alone as a true
11 economic impact analysis for the CSP, the very
12 program for which it was created.

13 How can an insufficient economic
14 impact analysis that is going to be redone for
15 the very program it was created be used to
16 justify a late-game law that will devastate
17 our small businesses in Southeast Alaska.

18 We have begun to quantify the
19 actual economic devastation of the 37-Inch
20 Rule. 2011's bookings for Gustavus charter
21 operators and lodges that have made their
22 clients aware of the rule are down 30 to 56

1 percent.

2 Even at this early date, the City
3 of Gustavus has revised its tax revenue
4 projections and 2011 budget downward as a
5 direct result of the 37-Inch Rule. This is
6 only the beginning.

7 There are a number of businesses
8 across southeast Alaska that have yet to tell
9 their clients about the rule. Some are still
10 in disbelief and denial that any change in law
11 could have been handed so poorly and thought
12 it would be rescinded by now.

13 Some have already collected fully
14 for their 2011 trips, and are using funds to
15 cover operating expenses. Some are
16 experiencing tough economic times. They can't
17 afford to lose a single client by sharing this
18 late-breaking news.

19 The bottom line is that 80 percent
20 of the clients we inform about the rule let us
21 know that 37-inch halibut just don't cut it
22 for roughly \$5,000 a trip per person.

1 We rely on our repeat clients as
2 our business base. We build each subsequent
3 year's business from the satisfied clients we
4 get in the current year.

5 We can't open our doors and
6 operate a business on 20 percent of our
7 clientele for next year. Thankfully, 43 to 70
8 percent of our clients will still come in 2011
9 because of prearranged airline tickets and
10 vacations, but these hostage clients have
11 asked that we count them out for 2012 under
12 these or stricter conditions.

13 The first guided sport fishing
14 clients for 2011 left Gustavus May 14. As
15 anticipated, 10 out of 10 left angry and
16 disgusted, vowing never to return to Alaska
17 under the 37-Inch Rule or stricter conditions.

18 The ten who, one day, had to throw
19 back 16 out of 20 halibut because they were
20 too large to keep, weren't convinced that the
21 37-Inch Rule was required to preserve the
22 resource.

1 Even NOAA insists that stocks are
2 not at a critically-low level. The 2011
3 season is upon us. We absolutely can't get
4 this rule wrong this year, make a postseason
5 correction and expect to get our clients back
6 in 2012.

7 Our business model is completely
8 different than that of the commercial sector.
9 On behalf of the businesses dependent on the
10 halibut charter fishing industry, we plead
11 that you rescind the 37-Inch Rule until an
12 economic impact study can be done in support
13 of the guided fishing industry and virtually
14 every other small business in Southeast Alaska
15 tourism industry.

16 In rescinding the rule, you can
17 ensure a positive experience for 2011 for the
18 anglers that have already made a significant
19 investment in the Alaska economy and are
20 looking for us to collectively satisfy their
21 expectations.

22 We can work with you to develop

1 alternative measures that address the halibut
2 harvest and protect the resource we all rely
3 upon for our livelihoods.

4 That's the end. Thank you.

5 MS. VASSAR: Thank you, Ms.
6 Daniels.

7 Mr. Huff, are you on the phone?

8 MR. HUFF: Yes. Yes, I am.

9 MS. VASSAR: You are testifying on
10 the same issue with a different --

11 MR. HUFF: Yes, I am.

12 MS. VASSAR: -- with a different
13 vent. Okay. You may begin. Mr. Fred Kent
14 Huff.

15 MR. HUFF: Yes. My name is Fred
16 Kent Huff and I own Glacier Bay Eagles Nest
17 Lodge, doing business in Gustavus, Alaska. I
18 am representing the lodges and small
19 businesses in the Town of Gustavus.

20 NOAA has implement a new rule for
21 this coming fishing season that, if let stand,
22 will likely put most, if not all, of the

1 Gustavus fishing lodges out of business. We
2 need help in changing this unfair and unneeded
3 rule that will destroy our economy.

4 I am employ a total of five people
5 at my lodge, four of which are residents of
6 Gustavus, and charter three to five fishing
7 boats per week. This brings the total number
8 of people I pay weekly to between eight and
9 ten.

10 We would have not hired two of the
11 employees had we known of the effect this rule
12 would have. The local fishpacking company is
13 going to get by with three less employees than
14 they have had in the past.

15 We range from about 265 to 310
16 guests per year. This year, due to the one
17 halibut, 37-Inches or Smaller Rule, we will
18 have less than 200 guests.

19 The total revenue loss for my
20 lodge with be a minimum of \$300,000. This
21 loss is then passed on to the charter fishing
22 companies we book with, our employees, and to

1 many of the small businesses in the town of
2 Gustavus.

3 Each guest spends an average of
4 \$5,000 for their trip. The loss of this
5 revenue will severely affect the economy in
6 the community of Gustavus.

7 Most of the damage has been done
8 for this year, with bookings down throughout
9 Southeast Alaska from 30 to 56 percent from
10 last year.

11 The question is: How much
12 additional damage will this rule cause on the
13 remainder of this season and next year's
14 return bookings.

15 We have been in business since
16 1998. We have been working hard and putting
17 everything we have into making our lodge a
18 success and, due to no fault of our own, we
19 may lose our lodge.

20 During this time we have built up
21 a considerable number of very loyal guests who
22 come every year. We depend on these guests

1 returning from year to year to our lodge.

2 We have lost many of these guests,
3 and the few that are willing to come this
4 summer have indicated to us that they will not
5 be willing to come back if some changes in the
6 fishing regulations are not made.

7 If this regulation is let stand,
8 it will put most of the lodges that fish for
9 both salmon and halibut in Southeast Alaska
10 out of business.

11 A current economic impact study
12 for the affected area should have been done.
13 I am aware of no such recent study. If a
14 study had been done properly it would have
15 reflected the destructive impact of the one
16 halibut, 37-Inches or Smaller Rule would have
17 had on the lodges and charter businesses of
18 Gustavus.

19 A number of Gustavus lodges and
20 charter fishing businesses will fail if this
21 is not changed. A Federal injunction or
22 legislative ruling to stop the one halibut,

1 37-Inches or Smaller Rule from this summer
2 season is needed to prevent this from
3 happening.

4 The ruling of one halibut, 37-
5 Inches or Smaller was not put in place until
6 March of this year. Lodges start booking as
7 early as August of the previous season.

8 When the ruling came out, I was at
9 the Harrisburg fishing show. I had done four
10 shows prior to the Harrisburg show and booked
11 an average of 15 people per show.

12 At the five post-announcement
13 shows I did, I booked a total of six guests.
14 I have had a total of 19 of the guests I
15 booked from the first four shows cancel and
16 over 70 of my regular guests cancelled.

17 Again, the total monetary damage
18 from this ruling to my business is over
19 \$300,000.

20 The one halibut, 37-Inches or
21 Smaller Rule has singled out the charter
22 fishing industry to bear the brunt of the

1 halibut biomass harvest reduction in
2 noncommercial fishing in Southeast Alaska.

3 There were no similar restrictions
4 placed on self-guided charters or personal
5 harvest trips. This rule discriminates
6 against the fishermen who does not feel
7 comfortable taking a boat out alone and
8 therefore, must charter a guided trip.

9 The southeast commercial halibut
10 fishing industry also faces cuts this summer.
11 Their prices are based on supply and demand.
12 We can't increase our prices to make up for
13 lost revenue at the last minute.

14 The fact is, we are hard-pressed
15 to find a client that would pay for air fare
16 and take a nearly free halibut fishing
17 vacation under the 37-Inch Rule.

18 There are many reasons why this
19 rule should be tabled, eliminated, reevaluated
20 or modified, including saving thousands of
21 jobs and hundreds of small businesses in
22 Southeast Alaska.

1 Thank you very much.

2 MS. VASSAR: Thank you, Mr. Huff.

3 Our next testimony will come from
4 Mr. William Little.

5 Mr. Little, are you on the phone?

6 MR. LITTLE: Yes, I am.

7 MS. VASSAR: All right. Mr.

8 Little, your comment is directed at SBA 8(a)
9 program. You may begin.

10 MR. LITTLE: In New Orleans on
11 March the 4th, 2011, I testified at a hearing
12 with the Office of Ombudsman as following?

13 MS. VASSAR: Mr. Little, speak up
14 louder, please.

15 MR. LITTLE: In New Orleans, on
16 March the 4th, 2011 I testified at a hearing
17 with the Office of Ombudsman as follows:

18 "Hurricane Katrina and Rita, the
19 costliest disaster in the history was very
20 devastating to the Gulf Coast, destroying
21 lives, property and minimizing the ability to
22 perform business and to receive the normal

1 training from Small Business, SBA.

2 "The ability to do business in the
3 Gulf Coast was curtailed drastically. People
4 are basically trying to put their lives back
5 together. The recovery from Hurricane Katrina
6 and Rita is still ongoing and there is not one
7 rule in the regulations that offers businesses
8 in the program an extension of their 8(a)
9 certifications.

10 "Therefore, I am requesting that
11 the subject of "major catastrophes" be
12 addressed by adding regulations that would
13 extend the eligibility of 8(a) firms in the
14 Small Business Administration Program, when
15 they are affected by a major catastrophe
16 disaster the size of Katrina, Rita --
17 Hurricanes Katrina/Rita, and these
18 regulations should be grandfathered in to
19 include all of the 8(a) firms affected.

20 "I am specifically requesting that
21 a five-year extension be automatically added
22 to the eligibility of the firms in the 8(a)

1 program for the firms in the Gulf Coast who
2 were in the 8(a) program during the time of
3 the storms.

4 "I am also requesting that the
5 graduated of the 8(a) program before Hurricane
6 Katrina and Rita that can prove an
7 irreversible loss will be allowed back into
8 the program for a period of five years.

9 "I personally know 8(a) graduates
10 who not only lost their businesses but also
11 lost their homes as well. Even though they
12 graduated from the program prior to Katrina,
13 they are now in worse shape than when
14 entering the program for the first time."

15 This concludes the testimony
16 presented at the hearing in New Orleans on
17 March the 4th, 2011. Now I want to add some
18 additional comments.

19 There was some additional changes
20 to the 8(a) program which, in my opinion, sets
21 a new precedent. The first change is in the
22 military active duty owners.

1 8(a) companies owned by
2 individuals called up on active duty may have
3 their 8(a) company's program tenure
4 temporarily suspended during the period of
5 call-up or designate another disadvantaged
6 individual to run the business.

7 If there can be a new rule added
8 to extent the tenure of military active duty
9 owners, there can also be a new rule added to
10 extend the tenure of victims of Hurricane
11 Katrina/Rita.

12 My second point is that SBA added
13 a self-certifying woman-owned set-aside
14 program with no time limit in the program and
15 no limit on the amount of money that can be
16 made in the program.

17 We are only asking for five years
18 of recovery time. We are not asking for an
19 unlimited time in the program. We are asking
20 again for the five-year extension in the
21 program not only based on the precedents with
22 the military and the woman-owned, but the

1 Federal Government declaring the Gulf Coast a
2 disaster area, complete with FEMA getting
3 involved for the very first time.

4 That is how bad the area was after
5 the storm. And that completes my testimony.

6 MS. VASSAR: Thank you, Mr.
7 Little.

8 MR. LITTLE: You're welcome.

9 MS. VASSAR: Okay. I think that
10 we -- is Mr. Jerry Taylor on the line?

11 (No response.)

12 MS. VASSAR: Okay. Mr. Jerry
13 Taylor was not there.

14 All right. Mr. Leon Hampton.

15 MR. HAMPTON: Yes. I'm here.

16 MS. VASSAR: All right. You may
17 begin your testimony.

18 MR. HAMPTON: All right. Thank
19 you, Ms. Vassar, members of the board, for
20 allowing me to speak again.

21 I listening to Mr. Little on the
22 March the 4th and I was asked -- I'm going to

1 add more of a personal note it just to give
2 the board an idea of what's really occurred
3 with most of the 8(a) companies here in New
4 Orleans during Katrina and Rita.

5 It says, "Dear Ms. Vassar, I am
6 writing this letter to require your support
7 relating to the restoring of Ultimate
8 Solutions and other eligible companies that
9 were affected by the devastation of Hurricanes
10 Katrina and Rita.

11 "Ultimate Solutions is a veteran-
12 owned small disadvantaged business based in
13 New Orleans. We were incorporated in 2000 and
14 accepted into the SBA program in August of
15 2001.

16 "When Hurricane Katrina hit the
17 New Orleans area, we had just completed our
18 fourth year in the 8(a) program. At the time
19 we were a company that employed 38 technical
20 professionals and was in position to begin to
21 experience considerable growth.

22 "As a result of Hurricane Katrina,

1 we lost roughly 50 percent of our business
2 revenue, roughly \$2 million which included the
3 loss of 18 employees and two major contracts.

4 "A number our employees were
5 scattered as far north as Washington, D.C. and
6 as far west as Los Angeles, California, and as
7 far south as Southern Florida, and all areas
8 in between.

9 "Many of our employees decided to
10 relocate or could not afford to return home.
11 We lost many of our previous positions because
12 the work was relocated or terminated as a
13 result of the effects of Hurricane Katrina.

14 "So, rather than having the
15 opportunity to continue building our business
16 as planned, we spent the next five years in
17 the program just trying to recover our losses.

18 "Accordingly, the extremely
19 negative effects of Hurricane Katrina and Rita
20 financially and businesswise greatly impacted
21 the growth, the potential growth of Ultimate
22 Solutions.

1 "We not only lost potential
2 business opportunities, we also lost
3 employees with skill sets that we had
4 developed over the first four years of our
5 8(a) program participation.

6 "I would like to request that, in
7 the event amendments are taken up on this
8 theory that we are convinced that this will be
9 an important piece of the legislation for all
10 8(a) firms situated as we are here in the Gulf
11 Coast and also in other parts of the country
12 that have experienced or may experience the
13 type of disaster as visited upon our area with
14 Hurricane Katrina.

15 "The SBA 8(a) program that our
16 company and companies like our company be
17 restored in the 8(a) program for these five
18 years to give us the opportunity to
19 participate the full nine years as intended by
20 the program itself.

21 "We are also convinced that this
22 will be an important piece of legislation for

1 all 8(a) firms situated as we are in the Gulf
2 Coast and also other parts of the country that
3 have experience or may experience the type of
4 disaster that has visited our area with
5 Hurricane Katrina."

6 I also would like to add that,
7 following up with Mr. Little's testimony that,
8 with the legislation that has been passed in
9 support for woman-owned businesses and service
10 disabled businesses, there's no timetable
11 placed on any of those programs, even though
12 they receive basically the same support as the
13 members of the 8(a) program.

14 So, I'm asking that 8(a) programs
15 be considered not only for the 8(a) -- for the
16 five-year extensions, but put the 8(a) program
17 on an even-field with the woman-owned
18 companies and as well as the service disabled
19 companies.

20 We would be forever grateful here
21 for your consideration in this matter. If
22 have any questions, please do not hesitate to

1 call me. Thank you.

2 MS. VASSAR: Thank you, Mr.

3 Hampton.

4 Mr. Andrew Lempa. Is he in the
5 audience or on the phone?

6 (No response.)

7 MS. VASSAR: Okay. Mr. Chris
8 Bates. Are you on the line?

9 MR. BATES: Yes.

10 MS. VASSAR: Oh. Okay. Okay.

11 MR. BATES: Is this my live mic
12 here?

13 MS. VASSAR: Yes. There he is.
14 Okay. Well, I think probably talk into the
15 telephone also.

16 MR. BATES: Talk into that as
17 well?

18 MS. VASSAR: Yes.

19 MR. BATES: Okay. Very good.

20 MS. VASSAR: You are testifying
21 about the FSSI --

22 MR. BATES: Correct.

1 MS. VASSAR: -- impact also.

2 MR. BATES: Correct.

3 MS. VASSAR: All right. Mr.

4 Bates, you may begin.

5 MR. BATES: Thank you very much.

6 Good morning. I'm Chris Bates,
7 president of the National Office Products
8 Alliance, known as NOPA. We are an
9 association that represents more than 800
10 small independent office products dealers
11 throughout the country.

12 We are greatly concerned about the
13 abrupt and widespread impact on small
14 businesses in our industry that is due to the
15 General Service Administration's recent
16 Federal Strategic Sourcing Initiative for
17 Office Products.

18 FSSI is now being implemented on a
19 mandatory basis by at least seven to eight
20 major Federal agencies and on a quasi-
21 mandatory basis by many others.

22 We respectfully ask you, Ombudsman

1 Vassar, and the SBA Administrator to urge the
2 President and the Office of Management and
3 Budget, Office of Federal Procurement Policy,
4 to move swiftly to effectively address the
5 very serious concerns outlined in my testimony
6 this morning.

7 We need a clear statement in
8 writing from -- a Statement of Administration
9 Policy, or SAP as it's called, that restores
10 full competition within the Federal
11 marketplace for our industry's products.

12 Contrary to what our industry was
13 led to believe in early 2010, when GSA held an
14 industry day in which I participated and many
15 other dealers did, with regard to a second
16 generation FSSI program, this procurement is
17 being implemented on a mandatory basis by many
18 agencies.

19 This represents a massive form of
20 contract bundling that is dramatically
21 reducing the number of small businesses that
22 are allowed to compete in the Federal

1 marketplace for office products by virtue of
2 their holding contracts under the GSA Schedule
3 program.

4 As, I think noted earlier, there
5 are more than 500 companies in this industry
6 who have been active in the Federal
7 marketplace. This change is occurring in a
8 very short period of time, effectively
9 launched July 1 of last year.

10 At the end of 2010, there were
11 more than 500 mostly small companies and a few
12 dealer-based organizations competing for
13 Federal business in our industry.

14 In many cases they were focusing
15 on one or more departments, but many were also
16 nationally focused on a government-wide basis.

17 However, with the rapid GSA OFPP
18 orchestrated push for use of the FSSI program
19 on a government-wide basis, using just 13
20 small and two large vendors, the economic
21 fallout has been swift and dramatic for most
22 of the remaining Schedule 75 contract-holders.

1 Already hundreds of jobs in small
2 businesses around the country in our industry
3 have been affected, and many more are at very
4 serious risk.

5 Some of our members, including a
6 dealer-owned group of -- a cooperative group,
7 competed successfully to win an FSSI award and
8 are working diligently to expand their Federal
9 sales.

10 I want to emphasize that NOPA
11 encourages their efforts to expand their
12 business under this contracting program, but
13 we have members who have been on both sides.

14 My point here today is really that
15 there is a much larger number on the side of
16 not being allowed to even compete for Federal
17 business going forward.

18 You know, our concern -- the
19 reality is, in just a few months, since this
20 program was launched, hundreds of small
21 businesses in our industry have started to
22 experience losses in Federal business, and

1 we're talking double-digit losses virtually
2 overnight, in Federal business, and in many
3 cases this is business that they have earned
4 progressively on a competitive basis over
5 many, many years, so these are not just new
6 and inexperienced firms. These are a lot of
7 very qualified vendors.

8 We strongly doubt that these
9 losses will be fully offset by the small
10 number of small business entities that receive
11 the FSSI/BPA awards in this go-around.

12 Our concern is that there's
13 capacity in our industry in the small business
14 community that's being permanently damaged and
15 perhaps will go away completely.

16 Such an outcome is clearly
17 contrary to longstanding Executive Branch and
18 congressional policy in support of small
19 business.

20 Ironically, the situation is
21 occurring in a commodity area where small
22 businesses owned and operated by women,

1 minorities, service disabled veterans and
2 second- and third-generations of
3 entrepreneurial families have been very well-
4 represented and highly-successful against much
5 larger national competitors.

6 Essentially, there are three;
7 Staples, Office Depot and Office Max.

8 We do not believe that this result
9 and that economic loss for small business is
10 what the Administration intends or is what our
11 nation needs at this point, just as our
12 economy is starting to recover.

13 More competition, not less is the
14 solution and can be readily restored in the
15 Federal market for office products by making
16 the FSSI program truly one option rather than
17 a mandatory, sole option for procurement of
18 office products.

19 These alternatives include the GSA
20 Schedule 75 contract program and individual
21 Federal agency BPA's that were, if it not for
22 FSSI, would remain in force and be actively

1 utilized.

2 They will not be used, however, so
3 long as individual Federal buyers of office
4 products are under direct guidance to buy --
5 to buy using the FSSI program or,
6 alternatively, must jump through bureaucratic
7 hoops to justify a decision to purchase from
8 a non-FSSI vendor.

9 Recent changes in the GSA
10 Advantage website used for Federal purchasing
11 represent one such hurdle, since they strongly
12 channel buyers to the FSSI program at the
13 expense of other potential purchasing vehicles
14 and make it exceedingly difficult to find and
15 compare pricing and product availability from
16 all other GSA Schedule 75 vendors and agency
17 BPA contractors.

18 Contrary to what proponents of
19 what Strategic Sourcing typically argue, best
20 value, including competitive pricing, is more
21 likely to occur when each Federal customer in
22 the many distinct geographic markets of the

1 United States has strong local alternative
2 vendors from which to choose who are dedicated
3 to servicing their specific needs.

4 Implementation of a government-
5 wide policy change such as we're suggesting is
6 always challenging for this reason: We
7 believe it is essential that the
8 Administration provide unequivocal new written
9 policy guidance on this matter and issue a
10 Presidential SAP.

11 We believe that so doing, they
12 need to emphasize that the use of FSSI Office
13 Products Contracting Program is not mandatory,
14 and that this is the most direct way to avoid
15 broad-based exclusion of hundreds of proven
16 small business from the Federal office
17 products market.

18 This approach, if communicated and
19 implemented broadly, and not undermined
20 through informal actions by OMB will help
21 ensure genuine ongoing choice of procurement
22 vehicles for agencies and will help the

1 Administration achieve the overall budgetary
2 savings that it hopes to achieve through the
3 FSSI program.

4 Time is of the essence, and
5 issuance and implementation of an SAP soon is
6 critical to ensuring that more businesses do
7 not continue to lay off key personnel.

8 As a couple of our prior speakers
9 emphasized, we believe this is a defining
10 moment for the Small Business Administration
11 as the voice of small business within the
12 Administration.

13 There are major procurement issues
14 at stake within this procurement and our
15 industry is really just the tip of the
16 iceberg.

17 There are other industries with
18 large concentrations of small business that we
19 believe are on a target list to be similarly
20 affected down the road.

21 This is really a C-change in
22 procurement policy and we believe it's worthy

1 of your policy attention.

2 We hope you will strongly
3 encourage OMB, GSA and other Federal major
4 agencies to work with NOPA on a solution that
5 addresses all of these concerns. We thank you
6 very much for your attention. We long a
7 morning, and appreciate the opportunity.

8 MS. VASSAR: Thank you, Mr. Bates.

9 MR. BATES: Thank you.

10 MS. VASSAR: Dee St. Cyr. Thank
11 you for coming to talk to us about the FSSI.

12 MS. ST. CYR: Hi. (Untranscribed
13 Native American Ho-Chunk language
14 introduction.)

15 MS. VASSAR: Thank you.

16 MS. ST. CYR: My name is Dee St.
17 Cyr. I am a member of the Ho-Chunk Nation, of
18 the Winnebago Tribe of Nebraska. My Indian
19 name is Bear Woman.

20 I've got just three minutes to
21 share the devastating impact of a recent
22 decision to small businesses nationwide by the

1 Office of Management and Budget and carried
2 out by their posse, the General Services
3 Administration.

4 We are one such company who has
5 been severely impacted. CADDO Solutions is a
6 100 percent Native American-owned and managed
7 national office products company.

8 For 21 years we have been
9 competing against the big bosses in our
10 industry, the Office Max, Office Depot and
11 Staples, with price, service and technology.

12 We do everything the "big guys" do
13 with one exception. We do it better, because
14 we have to.

15 Furthermore, we are a HUB-zone,
16 Veterans, Small Disadvantaged business and an
17 AbilityOne "Outstanding performer" for the
18 last five consecutive years.

19 Enough about me. Let's talk about
20 them, and their attempts to disenfranchise
21 over 97 percent of the office product
22 suppliers who hold GSA contracts.

1 First, in order for a small
2 business to hold one of these contracts we had
3 to go through a very rigorous, oftentimes
4 expensive process, just to be allowed to play
5 in the game.

6 Second, the GSA, in their infinite
7 wisdom, has put a two-year moratorium on
8 awarding these Schedule 75 contracts to future
9 applicants.

10 I guess it makes sense, though,
11 kind of in a sick way, since it feels like
12 their intent is to massacre small business.
13 Stick with me here.

14 The OMP, the largest component of
15 the Executive Office of the President has
16 launched the FSSI program that will single-
17 handedly, if instituted agencywide, increase
18 the unemployment numbers by an estimated
19 fifteen to 25,000.

20 You know, I'm wondering what part
21 of President Obama's January 18th, 2011
22 Presidential Memorandum to the executive heads

1 of departments and agencies regarding
2 regulatory flexibility and small business,
3 didn't they read or understand?

4 The President stated, "The
5 Regulatory Flexibility Act establishes a deep
6 national commitment to achieving statutory
7 goals without imposing unnecessary burdens
8 while considering alternative regulatory
9 approaches -- which minimize the significant
10 economic on small business."

11 Furthermore, in his State of the
12 Union Address, President Obama promised to
13 "remove any roadblocks that stand in the way
14 of small business growth."

15 Well, Mr. President, the two
16 largest roadblocks that stand in the way of
17 small business are the OMB and the GSA,
18 neither of whom are represented here today.

19 It seems incredible to me that the
20 White House would espouse support for small
21 business and then let their own Office of
22 Management and Budget take actions that are

1 forcing these very same small businesses to
2 lay off employees and close their doors during
3 the worst economic times since the Great
4 Depression.

5 The GSA awarded this FSSI \$200
6 million annual contract to only 13 small
7 businesses and two large "big guys" of course,
8 Staples and Depot.

9 I'm guessing their lobbyists made
10 a lot of money on this coup. This exclusive
11 contract is available to all Government
12 agencies, and many like the Department of
13 Interior, Commerce, Navy, Army and even the VA
14 have made it mandatory.

15 That is to say, their purchase
16 cardholders can only buy from one of the 15
17 companies that are awarded this contract.

18 You know, honestly, I congratulate
19 the small business companies who are awarded
20 this contract but, unfortunately, the "big
21 guys" are receiving the lion's share of the
22 business.

1 Based on the first quarter results
2 only, Staples and Depot have received over \$40
3 million of the nearly \$75 million spent for
4 office supplies.

5 Since 1492 we Native Americans
6 have withstood the attempts to obliterate us
7 and our culture from Christopher Columbus who
8 discovered us -- when, in reality, I believe
9 we discovered him lost at sea -- to our
10 government who tried to isolate us on
11 reservations, and who has broken every treaty
12 made between us to this recent attack on our
13 very existence by destroying our livelihood.

14 In spite of all of these attempts,
15 we are still here. Well, I say, "Enough is
16 enough."

17 I beseech you, the SBA, our small
18 business advocates, to stand with us, to fight
19 for us, and to engage with us in this battle.
20 One of our great and wise warriors, Tecumseh,
21 Chief of the Shawnee, once said, "A single
22 twig breaks, but a bundle of twigs is strong."

1 Separate, we are weak like that
2 twig, but together we can be strong. Help us
3 be the bundle.

4 Independent office product dealers
5 are one of the last bastions of small business
6 in American today and have withstood the
7 onslaught of the big bosses, but now it seems
8 the Federal Government is intent on finishing
9 us off.

10 You know, I say "Not now. Not
11 today. Not ever."

12 I will close with another quote
13 from one of our great leaders, Black Hawk,
14 born in 1767 and died in 1838, "How smooth
15 must be the language of the Whites, when they
16 can make right look like wrong and wrong look
17 like right."

18 What a tragic and sad testimony
19 that 173 years later it seems nothing has
20 changed.

21 (Untranscribed concluding
22 statement in Native American Ho-Chunk

1 Language).

2 Thank you.

3 MS. VASSAR: Thank you.

4 We have one more testimony on the
5 FSSI and GSA. Jaime Mautz.

6 MS. MAUTZ: Yes.

7 MS. VASSAR: Is that correct?

8 MS. MAUTZ: That's correct. Yes.

9 My name is Jaimie Mautz and I am
10 co-owner of Pacific Ink, Incorporated, which
11 is a woman-owned small business that was
12 awarded the GSA Schedule in January 2004.

13 Over the last seven years we've
14 worked hard on our GSA Schedule, both
15 marketing it and keeping it in compliance and
16 have bent over backwards keeping our
17 Government customers and GSA happy.

18 Since October 1st, 2010 we have
19 experienced a critical drop in our GSA sales,
20 which, in real dollars, comes to a difference
21 of \$417,000. January 2011 was the hardest to
22 swallow, as our sales were down 71 percent

1 over January 2010 sales. Our first quarter
2 2011 sales were down 61 percent over first
3 quarter of 2010.

4 Because we haven't seen anything
5 regards or our marketing efforts and our
6 monthly contact with all of our Government
7 customers we know that the reduction in the
8 sales is due entirely to the FSSI/BPA.

9 Our Government business is very
10 diversified, which has helped us weather past
11 budget delays, organization-wide BPA's et
12 cetera, but approximately 32 percent of our
13 Government customers have actually contacted
14 us to let us know that they are saddened that
15 they can no longer purchase from us because
16 their mandate is to buy from FSSI/BPA.

17 Looking at our customer list, we
18 estimate that loser to 60 percent can't order
19 from us anymore due to the organization's
20 mandates on them to order from the FSSI/BPA.

21 We also have reports from several
22 customers that are able to order from us, but

1 they are having a hard time finding us on GSA
2 Advantage the past few months due to the new
3 GSA Advantage website.

4 We've had a hard time locating our
5 products as well due to the new site and its
6 favoritism to FSSI/BPA companies.

7 Due to the dramatic decrease in
8 sales we had to lay off two people that
9 severed our Government customers and one
10 warehouse during the last three months.

11 We've had a difficult time paying
12 our vendors coverings our most basic expenses
13 of rent and medical insurance. We are
14 fighting for our livelihood and the livelihood
15 of our employees.

16 While we're doling this we have
17 reports from our customers that have to order
18 from FSSI/BPA that have not received their
19 products for over three weeks, are having a
20 hard time getting ahold of anyone for customer
21 service and, last but not least, paid more
22 than they would have for the product that they

1 purchased if they had purchased it from us.

2 As a taxpayer, this is very
3 disheartening, knowing that the Government can
4 buy it for less from Pacific Ink and several
5 other small businesses, get better service,
6 but are being mandated to by it elsewhere due
7 to a decision made by our Government.

8 We're hoping that you're hearing
9 our story here today and will help us stop
10 FSSI/BPA from putting over 500 small
11 businesses out of business.

12 Thank you for your time.

13 MS. VASSAR: Thank you.

14 Now, I skipped two people who
15 weren't on the line. Mr. Taylor, are you on
16 the line yet? Jerry Taylor?

17 (No response.)

18 MS. VASSAR: Mr. Andrew Lempa?

19 (No response.)

20 MS. VASSAR: Well, in the absence
21 of those two, I don't think I've missed
22 anybody else.

1 Is there anyone else in the room
2 or on the phone who is registered to talk?

3 So, I suppose that 19 of the 21 of
4 you have been heard today. We thank you for
5 coming and we appreciate your candor and your
6 -- the passion with which you expressed and
7 shared with us your stories.

8 And we have these in record. If
9 you saw us reading, we have your testimony and
10 we are reading with you, and making a few
11 notes.

12 The agencies in here have heard
13 your stories, and I've often said that you are
14 much better at expressing your concerns and
15 sharing your stories than I can ever be, so
16 that's why we have these public hearings, so
17 that they have a chance to hear your voices,
18 to see your faces, in many instances, and to
19 take your stories back to their individual
20 agencies.

21 We thank you again for being here.
22 We certainly thank the agency representatives

1 for coming here to hear the small businesses
2 and hear about their comments.

3 And with that, I thank our board
4 members also for being here and participating
5 as well as SBA employees who have joined us
6 today. So, with that, this hearing is
7 adjourned.

8 So, that concludes our hearing,
9 and this hearing is officially adjourned.

10 (Whereupon, the hearing was
11 adjourned at 11:50 a.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

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Fairness Hearing

Before: US Small Business Administration

Date: 05-24-11

Place: Columbia, MD

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my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

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